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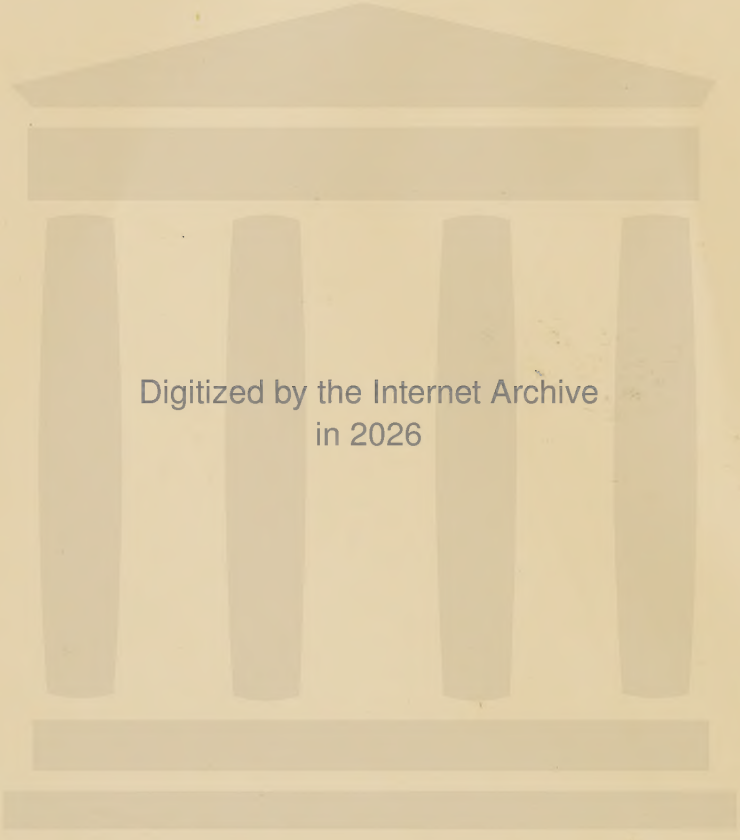
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KEY AND ELPHINSTONE'S

COMPENDIUM

OF

PRECEDENTS

IN

CONVEYANCING

TWELFTH EDITION,

VOL. I, PART II.

BY

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ADDENDA ET CORRIGENDA.

Page 2 Note, line 24. For "[1919] 2 Ch. 214," *read* "[1919] 2 Ch. 314."

,, 3 Note (*c*), line 27. After "L. C. Act, 1925, ss. 10, 15," *add:* "as amended by L. P. (Amendment) Act, 1926, minor amendments."

,, 43 Note (*a*). *Add:* "as to remedy for breach of this covenant, see *Rely-a-bell Burglar and Fire Alarm Co.* v. *Eisler*, 1926, Ch. 609."

,, 60 Note, last line. *Add:* "reversed, [1924] A. C. 851."

,, 68 Note, line 2. *Add:* "See as to agricultural holdings L. P. (Amendment) Act, 1926, s. 2."

,, 118 Note, line 45. Omit the words "or otherwise," and *add:* "T. Act, 1925, s. 7."

,, 123 Line 30. After "*Re Hope-Johnstone*," *add:* "*Re Drake's Settlement*, 1926, W. N. 132."

,, 123 Line 42. For "P. T. (fees) order, etc.," *read* "1926, S. R. & O., 1925, No. 1268, L/46, [1926] W. N., pt. ii. 32."

,, 160 Line 5. For "indre," *read* "deed."

,, 171 Line 19. For "[1982]," *read* "[1892]."

,, 205 Line 26. For "[1910]," *read* "[1900]."

,, 235 Line 27. After "L. P. Act, 1925, s. 2 (2)," *add:* "as amended by L. P. (Amendment) Act, 1926, minor amendments, and see *post*, p. 1049, note."

,, 252 Note (*e*), line 2. For "1922," *read* "1925."

,, 257 Note (*c*). At end of note, *add:* "See as to agricultural holdings L. P. (Amendment) Act, 1926, s. 2."

,, 258 Note (*h*), line 10. *Re Des Reaux & Setchfield* is now reported [1926] Ch. 178.

,, 272 Note (*h*). At end of note, *add:* "See L. P. Act, 1925, s. 48 (1)."

,, 287 Note (*a*). For "p. 681, note (*d*)," *read* "p. 619, note (*e*)."

,, 289 Note (*a*), line 3. *Hewson* v. *Shelley* is now reported, [1914] 2 Ch. 113.

,, 313 Note (*c*). *Add:* "*Anchor Trust Co.* v. *Bell*, [1926] Ch. 805."

,, 313 Note (*f*), line 3. For "[1922]," *read* "[1912]."

,, 339 Note (*b*). *Add:* "See L. P. (Amendment) Act, 1926, s. 1, enabling the vendor to sell subject to the annuity."

,, 340 Note (*c*). *Add:* "As amended by L. P. (Amendment) Act, 1926, minor amendment."

Page 354 Note, line 42. *Add:* "See L. P. (Amendment) Act, 1926, s. 4, providing for priority notices, and the minor amendment to s. 10 (6) relating to registration in the local deeds registry."

,, 355 Note, line 16. *Abbey* v. *Gutteres* is reported, 55 Sol. J. 364.

,, 355 Note, line 24. "The reference to *Kelly* v. *Barrett* is [1924] 2 Ch. 375."

,, 356 Note, lines 24 and 28. "The reference to *Reid* v. *Bickerstaff* is [1909] 2 Ch. 305."

,, 357 Note, line 10. *Add:* "Leave to apply to the Statutory Authority for modification of a restrictive covenant may be granted in an action to restrain breach thereof: *Fielden* v. *Byrne*, [1926] Ch. 620."

,, 358 Note, line 14. For "p. 731," *read* "p. 656."

,, 359 Note (*d*). "See now L. P. (Amendment) Act, 1926, minor amendment to L. C. Act, 1925, s. 10 (6)."

,, 390 Line 23. For "p. 1125," *read* "p. 665."

,, 395 Clause 6, line 8. For "pp. 282, *et seq.*," *read* "pp. 252, *et seq.*"

,, 434 *Add* at end of page: "See L. P. (Amendment) Act, 1926, minor amendment relating to the title of the survivor of several joint tenants."

,, 435 Line 26. "Paragraphs 1 (3)," *should read* "paragraph 1 (2)."

,, 437 Line 28. "See L. P. (Amendment) Act, 1926, minor amendment."

,, 450 Note (*b*). *Add* at end: "See L. P. (Amendment) Act, 1926, minor amendment."

,, 480 Note (*a*). "The reference at end of the note should be to L. R. R. 272 and 273."

,, 498 Note, line 12. *Add:* "*Gregg* v. *Richards*, [1926] Ch. 521."

,, 505 Note (*b*). "See now L. P. (Amendment) Act, 1926, minor amendment."

,, 515 Line 11. For "L. P. Act," *read* "L. R. Act."

,, 519 Clause 7. For the expression "Successors in title" occurring in lines 2 and 7, *read* "representatives."

,, 524 Note (*a*), line 2. Omit the words "Or of two lives yet to fall in."

,, 528 Line 33. *Add:* "See L. P. (Amendment) Act, 1926, minor amendments to L. C. Act, 1925, s. 15."

,, 534 Note (*b*). For "successors in title," *read* "representatives."

,, 542 Note (*b*), line 1. For "Prec. XX.," *read* "Prec. X."

,, 557 Note (*c*). See now L. P. (Amendment) Act, 1926, minor amendment to L. P. Act, 1925, s. 89.

,, 572 Note (*e*), line 1. For "p. 614," *read* "p. 567."

,, 576 Note (*b*). *Add* at end: "See now L. P. (Amendment) Act, 1926, minor amendment to s. 36."

,, 577 Prec. XXXIV., line 16. For "sd. X & Y," *read* "the vendors."

,, 579 Note, line 13. For "Bankruptcy Rules, 1886, r. 316," *read* "Bankruptcy Rules, 1915, r. 347."

,, 582 Line 24. See now L. P. (Amendment) Act, 1926, minor amendment to S. L. Act, 1925, s. 13.

Page 585 Line 24. *Parr* v. *Att.-Gen.* is now reported, [1926] A. C. 229.

,, 585 Line 39. Omit the words "provided that" to "were dead." See L. P. (Amendment) Act, 1926, minor amendment to S. L. Act, 1925, s. 105.

,, 587 Line 6. After "immediate binding trust for sale," *add: Re Leigh's Settled Estates,* [1926] Ch. 852."

,, 587 Line 7. After "*Re Johnson,*" *add: "Re Llandover Settled Estates,* [1926] Ch. 626."

,, 591 Line 18. "See also L. P. (Amendment) Act, 1926, minor amendment to S. L. Act, 1925, s. 31. '

,, 595, 599. Precedents XXXVI and XXXIX. It has been decided by the General Council of the Bar that counsel cannot with propriety give a certificate of title such as is recited in these precedents. W. N., [1926] p. 117.

,, 600 Clause 7 and note (*b*). A condition of re-entry is not now necessary. See L. P. (Amendment) Act, 1926, minor amendment to S. L. Act, 1925, s. 39 (4) (i).

,, 605 Clauses 1, 2, 3, and 4. For "said C," *read* "the purchaser."

,, 674 Note (*a*), line 1. After "Part IV.," *add:* "as amended by L. P. (Amendment) Act, 1926, minor amendments."

,, 683 Note (*a*), line 2. "See L. P. (Amendment) Act, 1926, minor amendment to S. L. Act, 1925, s. 105."

,, 711 Line 8. For "Form 3," *read* "Form 2."

,, 720 Note (*a*), line 8. After "*Re Goodrich,*" *add: "Re Stallery,* [1926] Ch. 284."

,, 724 Note (*c*), line 3. For "Indre," *read* "Deed."

,, 732 Note (*b*). See L. P. (Amendment) Act, 1926, minor amendment to L. P. Act, 1925, s. 26.

,, 1050 Note (*c*), line 23. For "A. E. Act," *read* "L. C. Act."

,, 1050 Note (*a*), line 3. "See now P. T. (Custodian Trustee) Rules, 1926, [1926] W. N. 266."

,, 1056 Line 4. For "1906," *read* "1925."

,, 1058 Note (*a*), line 2. For "thus," *read* "that."

,, 1069 Note (*c*), line 3. See L. P. (Amendment) Act, 1926, minor amendment to L. P. Act, 1925, s. 27.

,, 1076 *Add* at end of note: "Different parcels of the settled land may be comprised in separate principal vesting deeds. No vesting deed is required in respect of capital money: See *Clayton's Settled Estates,* [1926] Ch. 279."

,, 1079 Note (*b*). *Add:* "See *Re Cradock's Settled Estates,* [1926] Ch. 944."

DIRECTION AND CONSENT.

Consent to trustees of settlement investing in funds (*a*).

1. To A., B., & C., the trees of a settlmt dated, &c., being the settlemt made on our marre.

We hby consent to your investg the sum of £——, now in your hands as trees of the sd settlemt, in the pchase of 2½ p.c. Consolidated Stk. As WITNESS our hands this —— day of ——.

Signatures of husbd & wife.

Attestation.

Request to trustees of will to change investment.

2. To A. & B., the trees of the will dated, &c., of the late ——.

I hby request you to sell the sum of £—— — p.c. Consolidated Stk now standg in your names as such trees, & representg, *or*, " formg pt of," the share, to the income whrof I am entitled for life, of the residuary este of the sd testor, & to invest the net proceeds of such sale (after paymt of the expses of the sale & reinvestmt) in the pchase of £—— — p.c. Debenture Stk of the —— Rly Co [or in case such investmt shl, owing to the state of the market, or for any other reason be deemed inexpedient, then in the pchase of, &c., or in any other investmt authorised by the sd will, or by law]. As WITNESS, &c.

Signature of tenant for life.

Attestation.

Direction to trustees to call in mortgage and purchase land.

3. To A. & B., the trees of a settlemt, dated, &c., made on our marre.

We hby request you to call in the sum of £—— (formg pt of the funds subjt to the trusts of the sd settlemt secd upon a mtge of the —— Este belonging to Mr. ——), & to invest the same or a sufficient portion throf in the pchase of the freehd este or ppty known as, &c., & to invest any surplus of the sd moys wch may remain after completg the sd pchase & paymt of

(*a*) See Trustee Act, 1925, s. 3.

the incidental expses in the pchase of India —— p.c. Stk. As WITNESS, &c.

Signatures of husbd & wife.

Attestation.

Request to trustees to sell land.

4. To A. & B., the trees of a conveyce in trust for sale dated, &c., & made on our marre betwn, &c.

We request you to put up for sale by auction the este or ppty known as the —— Este formg pt of the ppty comprised in the above mentd conveyce [& we undertake to concur in any assurces to the pchasers (*b*)]. As WITNESS, &c.

Signatures of husbd & wife.

Attestation.

Request by wife to trustees to call in money secured by covenant of husband.

5. To A. & B., the trees of a settlemt, dated, &c., made on my marre.

WHAS the sd settlemt contains a covt by my husbd for paymt to the trees throf of the sum of £——, & intt thron in the meantime as thrin mentd, but with a declaron that the trees shd not call in or compel paymt of the sd sum of £—— durg the joint lives of myself & my sd husbd, unless directed so to do by me in writg under my hand: Now I hby direct you forthwith to call in & compel paymt of the sd sum of £—— togr with any intt that may be due thron. As WITNESS, &c.

Signature of wife.

Attestation.

Consent to trustees advancing a child (*c*).

6. To A. & B., trees of a settlemt dated, &c.

We hby give our consent to your raisg the sum of £——, pt of the expectant or presumptive share of our son [daur] D., under the trusts of the above-mentd indre by the sale of a

---

(*b*) See L. P. Act, 1925, s. 26.

Consent to advancement.

(*c*) The consent of husband and wife to an advancement to be made by the trustees of their marriage settlement in favour of a child or other issue of the marriage under a power of advancement in the usual form or under the statutory power, does not appear to require an *ad valorem* stamp as a voluntary disposition within the meaning of the Fin. (1909–10) Act, 1910, s. 74. The disposition is in this case, as in the case of an appointment under a special power in the settlement, made by the settlement itself in accordance with the trusts whereof the consent is given: see *ante*, p. 88, note. The case is different from that of a release of a life interest which takes effect against the trusts of the settlement. If this view is correct it may save expense to act under the power of advancement, where practicable, rather than to surrender a life interest to a child.

sufficient pt of the sum of £—— —— Debenture Stk of the —— Rly Co, now subjt to the trusts throf & standg in your names, & to your applyg the same in or towards paymt of the premium payable to —— for takg the sd D. to learn the trade or business of —— [in or towards providg an outfit for the sd D. on the occasion of her intd marre with ——], psuant to the power of advancemt contained in the sd settlemt. As WITNESS, &c.

Signatures of husbd & wife.

Attestation.

7. To A. & B., the trees of a settlemt, dated, &c., & made, &c., *or*, " the will of X., deced."

Direction by tenant for life to trustees to make investment.

I hby by virtue of the powers vested in me under the S. L. Act, 1925, as tenant for life in posson under the sd settlemt [will] direct you to invest the sum of £——, pt of the capl moys now in your hands as such trees as afsd in the pchase of, &c., & in paymt of the bills of costs of my solors, Messrs. —— and of your solors, Messrs. —— in respt of the sd pchase, & of the fees of my surveyor, Mr. —— for his report & valuation of the ppty. Dated, &c.

Signature of tenant for life or limited owner.

Attestation.

8. *Commencemt as in last form.*

Direction by tenant for life to trustees to pay purchase-money and costs.

I hby by virtue, &c., direct you to sell out a sufficient portion of the sum of £—— 2½ p.c. Consolidated Stk, now invested in your names as trees of the above-mentd settlemt [will], & to apply the proceeds, *or*, "to apply a sufficient portion of the capl moy in your hands, subjt to the trusts of the sd settlemt [will]," in paymt of the pchase-moy, amtg to £——, of an este situate &c., wch I have lately contracted to pchase from X. upon the execution of the convce throf on the —— day of —— next, or such later day as may be appted for the complon of such pchase, AND in paymt of the bill of costs [amtg to £——] of my solors, Messrs. —— [& of your solors, Messrs. ——] & in paymt of the fees of my surveyor, Mr. ——, for his report & valuon of the ppty in relation to such pchase. Dated, &c.

Signature of tenant for life or limited owner.

Attestation.

Directions by tenants for life to trustees to pay costs of sales.

9. *Commencemt as in f.* **7.**

We hby by virtue, &c., authorise & request you as trees of the above-mentd settlemt [will], to apply any capl moy in your hands subjt to the trusts throf in or towards paymt of the bill of costs of Messrs. ——, as solors for the mtgees of the sd Estes, in respt of sales of portions of the —— Estes, & also in paymt of the bill of costs of Messrs. —— as solors for yourselves, the sd trees, & in paymt of the bill of costs of Messrs. ——, as solors for ourselves, the tenants for life of the sd Estes, in respect of such sales (*a*). Dated, &c.

Signatures of tenants for life or limited owners.

Attestation.

Consent by trustees to tenant for life cutting and selling timber (*b*).

10. To A., tenant for life [limited owner] of the Y. Este under a settlemt, dated, &c., & made, &c., *or*, " the will of X., deced."

We, the trees of the above-mentd settlemt [will], do hby, psuant to the S. L. Act, 1925, give our consent to your cuttg & sellg the timber wch is ripe & fit for cuttg on the lands described in the schdle hto [Provd that three-fourths of the net proceeds of the sale are to be pd to us to be applied as capl moy (*c*)]. Dated, &c.

[*Short schdle of parcels.*]

Signatures of trees.

Attestation.

Consent by trustees to sale or lease of mansion-house, &c. (*d*).

11. *Commencemt as in last form.*

We the trees under the above-mentd settlemt [will] do hby, psuant to the S. L. Act, 1925, give our consent to your sellg [leasg] the mansion house & lands described in the schdle hto, or any pt or pts throf, in such mner & subjt to such [parlars] condons & provons & upon such terms as you may think fit, And we hby undertake & agree to sign & execute such deeds

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(*a*) As to what costs are properly payable out of capital money, see Vol. 2, " SETTLEMENTS (REAL).

(*b*) See S. L. Act, 1925, s. 66 ; *Honywood* v. *Honywood*, L. R. 18 Eq. 306 ; *Dashwood* v. *Magniac*, [1891] 3 Ch. 306 ; *Re Trevor-Battye*, [1912] 2 Ch. 339.

(*c*) See S. L. Act, 1925, s. 66 (2).

(*d*) See S. L. Act, 1925, s. 65, and see *ante*, p. 588. The consent of the trustees required by the Act need not be communicated to the parties : see *Gilbey* v. *Rush*, [1906] 1 Ch. 11, at p. 24.

or instrumts for further testifying our consent to any such sale [lease] as may be deemed pper. Dated, &c.

[*Short schdle of parcels.*]

Signatures of trustees.

Attestation.

12. To Mr. A., *pchaser.*

Direction by tenant for life to purchaser to pay money to trustees or into Court.

I, B., of, &c., tenant for life [limited owner] of the ppty known as ——, comprised in a contract dated, &c., & made betn myself of the one pt & you of the other pt, do hby by virtue of the powers vested in me under the S. L. Act, 1925, direct you to pay the pchase-moy [amtg to £——] payable by you under the sd contract to C., of, &c., & D., &c., the trees of a settlemt dated, &c., *or*, "the will of X., deced," [*or*, "into Ct, psuant to the order dated, &c., wch has been obtained for that ppose"]. Dated, &c.

Signature of tenant for life or other limited owner.

Attestation.

13. *Commencemt as in f.* **10.**

Consent of mortgagee of life interest to sale by tenant for life (*a*).

I, A., of, &c., as mtgee of your life intt under the abovementd settlemt in the ppty hrinar mentd (with other ppty) under a mtge, dated, &c., & made, &c., do hby consent to the sale by you under the powers of the S. L. Act, 1925, of the fee simple of the ppty mentd in the schdle hto to X., of, &c., for the sum of £——, upon paymt of the sd pchase-moy to the trees of the sd settlemt, & do further consent to your investg the sd pchase moy in any of the investmts authorised by the sd settlemt for the investmt of capital moy arisg thrunder. Dated, &c.

[*Schdle of parcels.*]

Attestation. *Signature.*

(*a*) See S. L. Act, 1925, s. 104, and *ante*, p. 586. The effect of sub-s. (5) is to make the concurrence of the mortgagee of the life interest in the conveyance unnecessary in all cases (see *ante*, p. 585). The necessary consent may be given by a trustee or personal representative who has become assignee for value of the mortgaged interest (sub-s. 6); and if the mortgaged interest has become settled on persons in succession, and there is no trustee or personal representative in whom the entirety of the interest is vested, then the consent may be given by the person for the time being entitled in possession under the limitations of that settlement (sub-s. 7); and if that person is an infant, then by his parents or parent or testamentary or other guardian on his behalf in the order named (sub-s. 8).

Consent of trustee in bankruptcy to investment of capital money by tenant for life in securities not authorised by statute (*a*).

14. *Commencemt as in f.* **10.**

I, A., of, &c., as tree in bankcy of your este & effects do hby consent to your investg the sum of £——, being the proceeds of a sale recently effected by you of pt of the ptty comprised in the above-mentd settlemt, in the pchase of —— [*state permitted investmts*]. As WITNESS, &c.

Signature of trustee in bankruptcy.

Attestation.

Consent of beneficiary to partition (*b*).

15. To A. & B., the trees, under a conveyce in trust for sale, *or* " the staty trusts for sale " of the undermentd ppty [dated, &c.].

As one of the persons intted (*c*) in posson in the net rts & profits of the land situate at —— in the coy of —— [& known as the —— este], *or* " the ppty in —— Street —— in the coy of —— " now held by you upon trust for sale under the above-mentd conveyce *or* " upon the staty trusts, I, C. of, &c., hrby consent to a partition being made of the sd land [ppty] in the mner & upon the terms follg, namely that each of the psons mentd in the first column of the schdle hto shl take the land [ppty] described in the second column of the sd schdle and thrin set opposite to his or her name & shl receive for equality of partition the sum (if any) set opposite to his or her name in the third column of the sd schdle. As WITNESS, &c.

[*Schdle.*]

Signature.

Attestation.

Request to Public Trustee to act

16. To the Public Tree.

Whas by the effect of the transitional provons of the Law of Ppty Act, 1925, First Schdle, Part IV., para. 1 (——) the ppty

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(*a*) See S. L. Act, 1925, s. 104 (4) (*b*) & (10).

(*b*) See L. P. Act, 1925, s. 28 (3), and the forms of partition, *post*, p. 1064. The consents prescribed by the section are required by the trustees for their own protection. The terms upon which the partition is to be effected must be fully & clearly set out in the form of consent. This is most conveniently done, as formerly in a partition deed in which all the persons beneficially interested concurred, by reference to a schedule. If necessary a plan of the property must be prepared and a copy annexed to each consent.

(*c*) In the case of a committee or receiver consenting on behalf of a lunatic or defective say, "As the duly appointed committee," *or* receiver having the power of a committee " in lunacy of —— one of the persons interested, &c."

comprised in & at the commencemt of the sd Act held in undivided shares vested in posson under a conveyce [settlemt] dated, &c., & made, &c., became vested in you upon the staty trusts applicable thrto: Now WE being psons intted in more than an undivided half of the [income of the] sd ppty hby request you to act in the sd trust. AS WITNESS, &c.

in the statutory trusts (*d*).

Signatures.

Attestation.

17. To A. & B., the trees for sale under the staty trusts of the ppty comprised in a conveyce [settlemt] dated, &c., & made, &c.

Consent of mortgagee to exercise by trustees of statutory trusts (*e*).

I, A., of, &c., as mtgee in posson of the ppty hrinar mentd wch forms pt of the ppty comprised in the above-mentd conveyce [settlemt] hby consent to your sellg [leasg] the ppty mentd in the schdle hto to X. of, &c. [*give short parlars of the material terms as to price or rent, &c., or orwise*]. AS WITNESS, &c.

[*Schdle.*]

Signature of mortgagee.

Attestation.

18. *Commencemt as in f.* **6.**

Consent of parent or guardian to execution of trust for sale (*f*).

I, A., of, &c., the father ["testamentary guardian" or *as the case may be*] of X. an infant whose consent is by the above-mentd convce expressed to be requisite to the exon by you of the trust for sale thrin contd hby consent to the sale by you psuant to the sd trust for sale of the ppty mentd in the schdle hto, being pt of the ppty comprised in the sd conveyce, to X. of, &c., for the sum of £——. AS WITNESS, &c.

[*Schdle.*]

Signature of father [*or guardian*]

Attestation.

19. To A., tenant for life of the —— Este under a trust instrumt, dated, &c.

Consent by remainderman to a conveyance

I, B., of, &c., being entitled in remainder after your death to the above-mentd ppty hby consent to your conveyg the

(*d*) See L. P. Act, 1925, First Sched., Part IV., para. 1 (3) (i) & (ii) and para. 1 (4) (i).

(*e*) See L. P. Act, 1925, First Sched., Part IV., para. 1 (9).

(*f*) See L. P. Act, 1925, s. 26 (2). The above consent is required for the protection of the trustees. It is not made requisite to the validity of the conveyance in execution of the trust for sale.

under School Sites Act, 1891 (*g*).

ppty described in the schdle hto psuant to the School Sites Act, 1841, s. 2, as a site for a school for the educon of poor psons (*or orwise as the case may be*). As WITNESS, &c.

[*Schdle of parcels.*]

Signature of remainderman.

Attestation.

(*g*) See the L. P. (Amendment) Act, 1924, Ninth Sched., para. 7.

DISENTAILING ASSURANCES.

PRELIMINARY NOTE.

An entailed interest may be created by way of trust in any property, real or personal, and may be barred either absolutely or so as to create an interest equivalent to a base fee (L. P. Act, 1925, s. 130). The Fines & Recoveries Act, 1833, as amended, remains in force in regard to dealings with entailed interests as equitable interests (L. P. (Amendment) Act, 1924, Ninth Sched., para. 4, and Tenth Sched.). The power to bar an entailed interest depends therefore on the power conferred by s. 15 of the Fines & Recoveries Act, 1833, upon every actual tenant in tail, whether in possession, remainder, contingency or otherwise "to dispose of for an estate in fee simple absolute, or for any less estate, the lands entailed." A later section (s. 40) prescribes the mode by which such a disposition must be effected, *i.e.* an assurance by which the tenant in tail could have made the disposition if his estate had been an estate at law in fee simple absolute.

As to what is a disposition within the Act, see *Green* v. *Paterson*, 32 Ch. D. 95, where a declaration of trust was held ineffectual to bar an equitable estate tail in copyholds. It may be questioned whether a conveyance by the tenant in tail to himself in trust for himself is an effectual disposition within the Act. A person may convey land to or vest land in himself (L. P. Act, 1925, s. 72 (3)), but if he were absolute owner of the land at the time of the conveyance in trust, no disposition in the strict sense would be effected and no trust would be constituted.

Before 1926, a disposition under the Fines & Recoveries Act, 1833, was made by a limited owner, usually operated to pass a legal estate and necessarily became a document of title to the land. The disposition will now frequently be made by the estate owner of the land. It will in no case operate to pass a legal estate and never can become a document of title to the land. It must nevertheless conform to the provisions of s. 40 of the Act of 1833. In order to give some semblance of consistency, in these circumstances, to a document the purport of which but for the first three words might be thought to be obscure, the plan adopted in the following collection of precedents is to introduce words after the parcels, expressly modifying the "all the estate" clause now incorporated by s. 63 of the L. P. Act, 1925. With this addition s. 60 of the same Act which abolishes technicalities in regard to conveyances and deeds may be relied on and the operative part of the deed may be shortened by the omission of any words of limitation in reference to the freeholds and the omission of any reference to the terms under which any leasehold property may be held: see *Thellusson* v. *Liddard*, [1900] 2 Ch. 635.

Special protector.

Section 32 of the Fines & Recoveries Act, 1833, relating to special protectors is repealed as respects settlements made or coming into operation after 1925 (L. P. Act, 1925, Seventh Schedule).

Enrolment. The necessity for enrolment in the case of disentailing deeds executed after 1925 is abolished by the L. P. Act, 1925, s. 133. Formerly a disentailing deed must have been enrolled within six months after execution; and it was held that enrolment within that period might validly be effected after the death of the tenant in tail: *Whitmore-Searle* v. *Whitmore-Searle*, [1907] 2 Ch. 332.

Convict. The administrator of a convict's estate cannot bar his entailed interest, but the convict himself can do so: *Re Gaskell & Walters*, [1906] 2 Ch. 1.

Lunatic or defective. In the case of a lunatic or defective tenant in tail, the judge in lunacy may authorise the committee or receiver to bar the entail, see L. P. Act, 1925, s. 171 (2); *Re* E. D. S., [1914] 1 Ch. 618.

Infant. An order made under the T. Act, 1925, ss. 44 (ii) and 53, vesting or appointing a person to convey the property of an infant tenant in tail in possession is effectual to bar his entailed interest and the remainders over: see *Re Montagu*, [1896] 1 Ch. 549.

Rectification. As to the power of the Court to rectify a disentailing deed: see *Hall-Dare* v. *Hall-Dare*, 31 Ch. D. 251; *Meeking* v. *Meeking*, [1917] 1 Ch. 77.

Stamp. A disentailing deed which creates no new trusts other than a trust in favour of the person disentailing does not require an *ad valorem* stamp under the Finance (1909-10) Act, 1910, s. 74; see sub-s. (6).

I.

DISENTAILING DEED *by* TENANT *in* TAIL *in* POSSESSION (*a*).

Recital of title. THIS DISENTAILG DEED made, &c., btwn A., *tenant in tail* of the one pt & B. & C., *trees* of the other pt: WHAS the sd A. is tenant in tail [male] in posson under a settlemt of certain freehold [leasehold (*b*)] & other ppty the trusts whrof are declared by a trust instrumt dated, &c., & made, &c., *or*

(*a*) See Fines and Recoveries Act, 1833, ss. 15–21, and ss. 40–49. The deed has an equitable operation only. Until a deed of discharge has been executed by the trustees of the settlement pursuant to s. 17 of the S. L. Act, 1925, the person who has disentailed will be unable to convey the legal estate otherwise than under the powers of that Act: see s. 18. The decision in *Re Trafford*, [1915] 1 Ch. 9, that the powers of a tenant for life are not exerciseable after the execution of the disentailing deed is therefore over-ruled.

(*b*) Leaseholds and personal property may be entailed under L. P. Act, 1925, s. 130. In settlements of real estate made before 1926, leaseholds were sometimes assigned upon trusts corresponding with the uses of the freeholds. As to the effect of this, see *post*, p. 748, *note*. Where, however, leaseholds were assigned upon trust for sale with a direction to invest the proceeds in land to be conveyed to the uses of the settlement, they are for the purposes of the Fines and Recoveries Act, 1833, treated as the lands to be purchased (see s. 71 of that Act) and are disentailable in the same manner as freeholds: *Fordham* v. *Fordham*, 34 Beav. 59; *Re Harvey*, [1901] 2 Ch. 290.

" are declared by refce to the limitations & trusts of an indre (now constitutg the trust instrumt of the sd settlemt) dated, &c., & made, &c.," *or* " are declared by refce to the limitations & trusts of the will, dated, &c. [and a codicil thrto, dated, &c.] & proved by the exors thrin named, &c., of X. late of ——, deced ": AND WHAS the sd A. is desirous of barrg his entailed intts under the sd settlemt: NOW THIS DEED WITNESSETH that the sd A. hby grts assigns & disposes of unto the sd B. & C. ALL & SINGULAR the freehd [& leasehd (*c*)] ppty (whether corporeal or incorporeal) moy, secies (*d*) & other psonal ppty now subjt [or liable to be transposed into ppty to be made subjt] to the trusts of the sd settlemt in wch the sd A. has [or if such transposition were made would have] an entailed intt under the sd settlemt & all the equitable este & intt thrin respvly of wch the sd A. has by law power to dispose (*e*), TO HOLD all the same premes unto the sd B. & C. (*f*) discharged from all entailed intts of the sd A. under the sd settlemt & from all estes, rights, intts & powers to take effect after the determination or in defeasce of (*g*) such entailed intts & so discharged as afsd In trust for the sd A. for all such este & intt thrin resply as is hrinbfe expressed to be hrby disposed of. IN WITNESS, &c.

Desire to bar. Witnesseth. Grant. Parcels. Habendum.

II.

DISENTAILING DEED *by* TENANT IN TAIL *in* POSSESSION.

Short form without recitals.

PARTIES, A., *tenant in tail*, 1; B. & C., *trees*, 2: WITNESSETH that the sd A. hby grts assigns & disposes of unto the

Witnesseth.

(*c*) See note (*b*), *ante*, p. 740.

(*d*) The expression "securities" in the S. L. Act, 1925, is defined (s. 117 (xxiii)) as including stocks, funds and shares. By s. 78 of the same Act, where money or securities or the proceeds of sale of any property is or are by a settlement, whenever executed, directed to be held on trusts declared by reference to capital money arising under the Act from settled land, such money, securities or proceeds will be held upon the same trusts as if the same had been or represented money which had actually arisen under the Act from the settled land.

(*e*) See preliminary note, *ante*, p. 739.

(*f*) The words from this point, down to "In trust," etc., are not strictly speaking necessary, but it is the practice to insert them.

(*g*) See Elph. Introd., 7th ed., 633; *Cardigan* v. *Curzon-Howe*, [1901] 2 Ch. 479.

Grant. Parcels. sd B. & C., ALL & SINGR the freehd [& leasehd (*h*)] ppty, moy, secies & other psonal ppty in wch the sd A. has an entailed intt under or by virtue of a settlemt the trusts whrof are declared by a trust instrumt dated, &c., & made, &c., *or* " are declared by refce to the limitations & trusts of an indre (now constitutg the trust instrumt of the sd settlemt) dated, &c., & made, &c.," *or* by refce to the limitations & trusts of the will dated, &c., & proved by the exors thrin named, &c., of X. late of —— deced, & all the equitable este right, title, & intt thrin respvly of wch the sd A. has by law power to dispose (*i*), TO HOLD UNTO the sd B. & C. discharged, &c., *as in last Prec.*, IN TRUST for the sd A. for all such este & intt thrin respvly as is hrinbfe expressed to be hrby disposed of. IN WITNESS, &c.

Habendum.

III.

DISENTAILING DEED *by* TENANT IN TAIL IN REMAINDER *with* CONSENT *of* PROTECTOR (*a*).

PARTIES, A., *tenant in tail*, 1 ; B., *tenant for life & protector*, 2 ; C. & D., *trees*, 3 : WHAS the sd B. is tenant for life under & is also the protector of a settlemt of certain freehold [leasehd] & other ppty the trusts whrof are declared by a trust instrumt dated, &c., *or* " the trusts whrof are declared by refce to the limitations & trusts of an indre (now constitutg the trust instrumt of the sd settlemt), dated, &c." : AND WHAS the sd A. is tenant in tail [male] in remainder after the death of the sd B. & is desirous of barrg his entailed intts under the sd settlemt : NOW THIS DEED WITNESSETH that the sd A., with the consent [hby testified] of the sd B., as protector of the settlemt,

Witnesseth.

(*h*) See note (*b*), *ante* p. 740.

(*i*) See preliminary note, *ante*, p. 739.

(*a*) See Fines and Recoveries Act, 1833, s. 34 ; and preliminary note, *ante*, p. 739. The protector may execute after the death of the tenant in tail : *Whitmore-Searle* v. *Whitmore-Searle*, [1907] 2 Ch. 332. As to a married woman who may alone be protector of a settlement, see M. W. P. Act, 1907, s. 3. As to survivorship among protectors, see *Cohen* v. *Bayley-Worthington*, [1908] A. C. 97. A man may be at once protector and tenant in tail, in which case execution by him of a disentailing assurance operates as a consent : *Re Wilmer*, [1910] 2 Ch. 111. If there is no beneficial ownership of a prior estate, there can be no protector : *Re Jenkins*, [1917] 1 Ch. 46 ; and see *Re Hughes*, [1906] 2 Ch. 642.

hby grts assigns & disposes of unto the sd C. & D., *Parcels as in Prec.* I., p. 741 : AND all the equitable este & intt thrin respvly of wch the sd A. has with such consent as afsd by law power to dispose (*b*) : To HOLD all the same premes unto the sd C. & D. subjt & witht prejudice to the estes, intts & charges prior to & to the powers over-reachg the entailed intt of the sd A. in the sd respve premes, but discharged, &c., as in Prec. I., p. 741, & so subjt & so discharged as afsd In trust for the sd A. for all such este & intt thrin respvly as is hrinbfe expressed to be hrby disposed of (*c*). IN WITNESS, &c.

Grant.

Habendum.

In trust for tenant in tail.

IV.

DISENTAILING DEED *by* TENANT *in* TAIL *with* CONCURRENCE *of* PROTECTOR *limiting the* PROPERTY *to their* JOINT APPOINTMENT (*d*).

PARTIES, A., *tenant for life*, 1 ; B., *tenant in tail*, 2 ; C. & D., *trees*, 3 : WHAS the sd A. is tenant for life under & the protector of, & the sd B. tenant in tail [male] in remainder under a settlemt of certain freehd [leasehd] & other ppty the trusts whrof are declared, &c., *as in Prec.* I. : AND WHAS the sd A. & B. are desirous of barrg the entailed intts of the sd B. under the sd settlemt, & all estes, intts, & powers to take effect after the determinon, or in defeasce throf, & of declarg such further or other trusts of the ppty now subjt to the trusts of the sd settlemt as are hrinar expressed : NOW THIS DEED WITNESSETH that in psuance of such desire & in conson of the premes, the sd A., & the sd B., with the consent of the sd A. as

Recitals.

Desire to bar.

Witnesseth.

(*b*) See preliminary note, *ante*, p. 739.

(*c*) If it is intended that the tenant in tail shall not be independent of the tenant for life, the reversion should be limited to their joint appointment, and in default as the tenant in remainder appoints if he survives the tenant for life (not to him in fee), and in default of appointment upon the original trusts (see the next Precedent). If the entail is barred preparatory to a resettlement, it is best to make the tenant for life convey his life interest, so that the joint power of appointment affects the fee simple or other absolute interest in possession, as in the next Precedent.

(*d*) See Elph. Introd., 7th ed., 634, 643, and the last note. As to the effect of a disentailing assurance by a tenant for life and remainderman in tail on a shifting clause, see *Doe* v. *Earl of Scarborough*, 3 Ad. & El. 2, 897 ; *Milbank* v. *Vane*, [1893] 3 Ch. 79 ; 3 Dav. Prec., 3rd ed., 398.

Grant.

protector of the sd settlemt, hby grt assign & dispose of unto the sd C. & D., *Parcels as in Prec.* I., p. 741 : AND ALL the equitable este & intt thrin respvly of wch the sd A. & B. with the consent of the sd A. have by law power to dispose (*a*) : To HOLD all the same premes unto the sd C. & D. subjt to all charges & incumbces (if any) affectg the same premes respvly & to all estes intts & charges prior to & to the powers over-reaching the entailed intt of the sd B. in the sd respve premes (other than the life intt thrin of the sd A.), but discharged, *&c., as in Prec.* I., p. 741 :

Upon such trusts as A. and B. appoint.

AND SO SUBJECT & so discharged as afsd upon such trusts, & subjt to such powers & provons, as the sd A. & B. shl at any time or times hrafter by any deed or deeds, revocable or irrevocable, jointly appt, AND IN DEFAULT of & subjt to any such joint apptmt, Upon such trusts, & subjt to such powers & provons as the sd B., if he shl survive the sd A., shl at any time or times after the death of the sd A. by any deed or deeds, revocable or irrevocable, [or by will or codl expressly referrg to this psnt power or the ppty subjt thereto (*b*)] appt, AND IN DEFAULT of & subjt to any apptmt under the respve powers hrinbfe contained, Upon the trusts, & subjt to the powers & provons wch under or by virtue of the sd trust instrumt were subsistg or capable of takg effect in or over the same premes immedly bfe the execution of these psnts, & so as to restore & confirm the same trusts, powers, & provons (*c*). IN WITNESS, &c.

In default upon such trusts as B. appoints.

In default upon original trusts.

(*a*) See preliminary note, *ante*, p. 739.

(*b*) This requirement, the object of which is to prevent a general devise by will from operating contrary to the intention as an exercise of the power is effectual : see *Phillips* v. *Cayley*, 43 Ch. D. 222 ; *Re Davies*, [1892] 3 Ch. 63 ; but a will purporting to dispose of property over which the testator has a power of disposition by will operates as an execution of the power in the text : *Re Lane*, [1908] 2 Ch. 581.

(*c*) Under this limitation A. becomes entitled subject to the over-riding powers of appointment to a life interest " as of his former estate or interest : " S. L. Act, 1925, s. 22, and see note on S. L. Act, 1925, *ante*, p. 584.

V.

DISENTAILING DEED *by* TENANTS *in* COMMON *in* TAIL *extending to a possible* ACCRUING SHARE *under* CROSS REMAINDERS (*a*).

PARTIES, A. & B., *tenants in tail*, 1; X., *tenant for life & protector* (*b*), 2; D. & E., *trees*, 3: WHAS by a trust instrumt [indre] dated, &c., & made, &c. (being *or* "now constitg" the trust instrumt of a settlemt made on the marre of the sd X. & Y.) certain freehold [leasehold & other] ppty was limited & settled upon trust for [to the use of] the said X. for his life witht impeachment of waste with remainder, &c. *continue recital of settlemt down to & includg the trusts or uses in favour of the daughters of X. as tenants in common in tail with cross remrs in tail with remrs over; Recite that X. has had three daurs, namely, A., B. & C., of whom C. died leavg issue:* AND WHAS the sd A. & B. with the concurrce of the sd X. as protector of the sd settlemt, are desirous of barrg their entailed intts in all the ppty now subjt to the trusts of the sd settlemt, includg their entailed intts in the share thrin of the sd C. deced, in remr expectant upon the failure of her issue, & all estes & intts to take effect after the determinon or in defeasce of such respve entailed intts, & of assurg their respve shares in the same ppty, includg the shares to wch they are entitled in remr as last afsd in mner hrinar expressed: NOW THIS DEED WITNESSETH that the sd A. & B. with the consent (hby testified) of the sd X. as protector of the settlemt resply, hby grt assign & dispose of unto the sd D. & E., ALL those the two eql undivided third pts or shares of them the sd A. & B. AND ALSO all that the remaing eql undivided third pt or share to wch they are resply entitled in remr expectant on the failure of issue of the sd C. deceased as afsd of & in, *Parcels, see Prec.* I, p. 741, *saying*, "in wch the sd A. & B. resply have [or if such transposon were

Recitals.

Desire to bar entail.

Witnesseth.

Grant.

Undivided shares.

(*a*) If either of the tenants in common were married before 1883 and the settlement was also prior to that year, her husband would be a necessary party to the deed, but no acknowledgment of the deed would now be necessary: see L. P. Act, 1925, s. 167.

(*b*) If the tenant for life were dead, A. and B,, the surviving daughters, would each, in the case assumed, be protector for the other as regards the possible accruing share. A married woman may be sole protector of a settlement in the cases mentioned in the M. W. P. Act, 1907, s. 3.

Habendum.

made wd have] entailed intts under the sd settlemt : " And all the equitable este & intt thrin resply of wch the sd A. & B. with such consent as afsd have resply by law power to dispose : To hold all the same premes unto the sd D. & E. subjt to all estes intts & charges prior to & to the pwrs over-reachg the respve entailed intts of the sd A. & B. in the sd respve premes, but discharged from all entailed intts of the sd A. & B. resply under the sd settlemt & from all estes rights, intts & pwrs to take effect after the determinon or in defeasce of such respve entailed intts & so subjt & so discharged as afsd In trust for the sd A. & B. for all such este & intt thrin resply as is hrinbfe expressed to be hrby disposed of as tenants in common in eql shares. In witness, &c.

VI.

DEED OF ENLARGEMENT *of an* Interest Equivalent *to a* Base Fee *into a* Fee Simple *or other* Absolute Interest (*a*).

THIS DEED OF ENLARGEMT made the —— day of ——, 192 , btwn A., *owner of base fee intt of, &c.*, of the one pt, and B., of, &c., and C., of, &c., *trees* of the other pt : Whas this deed is supplemental to the followg instrumts, namely first an indre (now constitutg the trust instrumt of the settlemt thrby made) dated, &c., & made, &c. : whereby certain freehd ppty was limited & settled to uses under wch at the date of the disentailg deed next hrinar mentd the sd X. was tenant for life & the sd A. was tenant in tail [male] in remainder after the death of the sd X. under the sd settlemt : And secondly a disentailg deed whrby the este in tail [male] of the sd A. under the sd settlemt was converted into a base fee now takg effect as an equitable intt equivalent to a base fee : And whas the sd X. died on the —— day of —— 192— & the sd A. is desirous of enlarging such intt into a fee simple or other absolute intt : NOW THIS DEED WITNESSETH that the sd A. hby

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(*a*) See Fines and Recoveries Act, 1833, s. 19. As to the enlargement of a base fee by a married woman, see *Re Drummond & Davie*, [1891] 1 Ch. 524, and the M. W. P. Act, 1907, s. 3. A tenant in tail can enlarge a base fee, notwithstanding that he has parted with it to a purchaser : *Bankes* v. *Small*, 36 Ch. D. 716.

grts assigns & disposes of unto the sd B. & C. ALL & SINGR the freehd [& leasehd] ppty (whether corpl or incorpl) moys, securities, & other psonal ppty now subjt to the trusts of the sd settlemt in wch the sd A. has an equitable intt equivalent to a base fee under the sd settlemt & all the equitable este & intt thrin resply of wch the sd A. has by law power to dispose: TO HOLD all the same premes unto the sd B. & C. In trust for the sd A. for all such este & intt thrin resply as is hrinbfe expressed to be hrby disposed of & so as to enlarge the intt equivalent to a base fee so vested in him as afsd into a fee simple or other absolute intt. IN WITNESS, &c.

Witnesseth. Grant. Entailed parcels.

VII.

CONSENT *of* PROTECTOR *by* SEPARATE DEED *to the barring of an* ENTAILED INTEREST (*a*).

A DEED OF CONSENT made by A., *protector*, of, &c.: WHAS the sd A. is tenant for life under & is also the protector of a settlemt of certain freehd [leasehd] & other ppty the trusts whrof are declared, &c., *as in Prec. I., p.* 740: AND WHAS the sd B. is tenant in tail [male] under the sd settlemt in remainder after the death of the sd A.: NOW THIS DEED WITNESSETH that the sd A., as protector of the sd settlemt, hby gives his consent to every or any disposon wch the sd B. shl make of the freehd [leasehd] & psonal ppty wch is now by any means subjt to the subsistg trusts of the sd settlemt or of any of such ppty or any pt or pts throf resply. IN WITNESS, &c.

(*a*) See Fines and Recoveries Act, 1833, s. 34. The deed must be executed on or before the date of the disentailing assurance: s. 42.

VIII.

DECLARATION *by a* TENANT *in* TAIL *under a* STRICT SETTLEMENT *made* BEFORE 1926 *with the* CONSENT *of the* PROTECTOR *that* LEASEHOLDS *and* HEIRLOOMS *settled by reference to the* FREEHOLDS *shall vest in him absolutely* (*b*).

PARTIES, A., *tenant in tail* [*male*], 1; B., *tenant for life*, 2.

Recitals. WHAS by an indre to wch this declaron is suppl (now constitutg

(*b*) The above precedent is a declaration made pursuant to a provision sometimes inserted among the trusts of additional property in strict settlements made before 1926. Before that date personal property including leaseholds directed to be held upon trust so as to devolve with real estate in strict settlement, vested, in the absence of express provision to the contrary, in the first tenant in tail at birth: *Foley* v. *Burnell*, 1 Bro. C. C. 274; 4 Bro. P. C. 319; *Portman* v. *Portman*, [1922] 2 A. C. 473; and, therefore, on his death under age vested in his administrator. The rule might have been excluded by express provision to that effect such as is recited in the above declaration, or by expressions of contrary intention to be gathered from the settlement, as for instance in the case of chattels, from a direction that they should be enjoyed by the person for the time being in the actual possession of the settled realty: *Re Beresford-Hope*, [1917] 1 Ch. 287; *Re Lewis*, [1918] 2 Ch. 308; *Re Fowler*, [1917] 2 Ch. 307, 325; but a general direction that the real estate & chattels should go together as long as the rules of law and equity would permit was not sufficient to exclude the rule: *Re Lord Chesham*, [1909] 2 Ch. 329; *Re Parker*, [1910] 1 Ch. 581; *Portman* v. *Portman*, *supra*. As to the meaning of "actual possession," see *Re Angerstein*, [1895] 2 Ch. 883; *Re Fothergill*, [1903] 1 Ch. 149; *Re Lord Petre*, [1910] 1 Ch. 290; and cf. *Lord Scarsdale* v. *Curzon*, 1 J. & H. 40.

As entailed interests can now be created by way of trust in real or personal property of any description, there can no longer be any occasion for the insertion in settlements made after 1925 of a provision against absolute vesting. Leaseholds and chattels intended to be held as heirlooms will usually be settled directly upon trusts creating entailed interests. As to money or securities or the proceeds of sale of any property which by any settlement made after 1925 is or are directed to be held on trusts corresponding as nearly as may be with the limitations of land thereby settled, it is provided by the S. L. Act, 1925, s. 78 (2), that such money, securities or proceeds shall be held on the like trusts as if the same had been or represented capital money arising under that Act from the settled land, and this is to be the case notwithstanding (sub-s. 5) any direction in the settlement that the trust property is not to vest absolutely in any tenant in tail or in tail male or in tail female, under the limitations of the settled land, who dies under a specified age, or before the happening of a specified event. There is no similar provision in the Act in reference to leaseholds or chattels, nor is there anything in the Act to enlarge or modify the interest taken by a tenant in tail under the trusts of additional property usually inserted in settlements made before 1926.

the trust instrumt of the settlemt thrby made & hrinar called the trust instrumt), dated, &c., & made, &c., certain freehd ppty was limited & settled to uses by virtue whrof & of the trusts now subsistg & correspondg to such uses the sd B. is tenant for life in posson under the sd settlemt with remr [subjt to a jointure rent-charge & to trusts for raisg portions for younger chln] to the sd A. as tenant in tail [male] thrunder & by the trust instrumt certain leasehds for yrs were assned to the sd X. & Y. for the respve residues of the terms for wch the same were held on certain trusts for the paymt of the rents & the pformce & observce of the covts by the lessees & condons in the sd sevl leases, by wch the same were resply held reserved & contained & subjt thrto Upon such trusts & with & subjt to such powers & provons as shd correspond with the uses, trusts, powers, & provons in the trust instrumt declared & contained concerng the freehd ppty thereby settled or as near thereto as the nature of the premes would permit, but not so as to increase or multiply charges or powers of charging, and so that such leasehd premes shd not vest absolutely in any pson thereby made tenant in tail [male or in tail] by pchase (i) who should die under the age of 21 years, or (ii) who should die before he shd become entitled to the actual posson or the recpt of the rents & profits of the sd leasehd premes, or (iii) who shd die before the expiron of 21 yrs from the determinon of all estes for life precedg his este in tail [male or in tail] witht in either of the two last-mentioned cases havg with the consent of the protection of the sd settlemt (if any) either barred the entail in the settled freehds or declared by deed that such leasehd premes or any of them should (witht prejudice to any prior este, intt or charge) vest in him absolutely : And by the trust instrumt certain chattels (hrinar called the heirlooms) were assned to the sd X. & Y. on trust to permit the same to devolve as heirlooms with the freehd ppty thereby settled, but subjt to provons as to the vestg of the same similar to those thrinbfe contd concerng the sd leasehd premes thereby assned ; And whas some of the sd leasehd premes & some of the heirlooms have been sold & other leasehds for yrs & chattels have been pchased under powers contained in or conferred by the trust instrumt : And whas the sd A. is desirous of acquirg an absolute vested intt in remainder after the death of the sd B. in all such of the sd leasehd premes & heirlooms as now remain unsold &

in the ppty representg the sold portions thereof resply ; And whas the sd B. has agrd to concur in these psnts in mner hrinar appearg NOW THIS DEED WITNESSETH that for effectuatg the sd desire the sd A., with the consent hby testified of the sd B., hby declares that All & singr the leasehd ppty heirlooms, & chattels now subjt to the trusts of the sd settlemt & capable of being affected by this declaron shl (but witht prejudice to any este, intt, or charge prior to the entailed intt of the sd. A. under the sd settlemt) vest absolutely in the sd A. In witness, &c.

Witnesseth.

EXCHANGES.

PRELIMINARY NOTE.

As to exchanges, see 2 Dav. Prec., 4th ed., pt. 1, p. 94. Deeds of Exchange at common law have long since fallen into general disuse. Actual entry was necessary to complete the title to the property taken in exchange, and a mutual condition of re-entry upon the property given in exchange in case of eviction from the property taken in exchange was implied in the deed of exchange. As to exchanges at common law generally see 4 Byth Conv., 3rd ed.

Exchanges of land are now effected either by mutual conveyances (to which the conditions incident to a deed of exchange at common law never applied: *Bartram* v. *Whichote*, 6 Sim, 93), or by order of the Ministry of Agriculture and Fisheries.

The L. P. Act, 1925, provides, by s. 51, that a conveyance of an interest in land may operate to pass the possession or right to possession thereof without actual entry; and by s. 59 (replacing s. 4 of the Real Property Act, 1845) that an exchange or other conveyance of land made by deed after the 1st of October, 1845, does not imply any condition in law.

Exchanges by the Ministry of Agriculture and Fisheries under the Inclosure Acts, 1845 to 1882 (for a list of which see the Short Titles Act, 1896), and the Commons Act, 1899, were formerly made use of in cases where the parties were unable otherwise to effect a valid exchange, and may still be used with advantage where they are desirous of saving the expense of the double investigation of title. Instructions for effecting such exchanges can be obtained from the Ministry, 10, Whitehall Place, London, S.W. Recourse cannot, however, be had to the Acts where the inequality in value exceeds one-eighth: Inclosure Act, 1857, s. 8; and this inequality must not exceed one-eighth of the value of the lands of smaller value. Even, however, where the inequality is below the proper limit, the difference can only be compensated under the Acts by a perpetual rent-charge: Inclosure Act, 1857, s. 6; and not by a money payment. There are powers of exchanging glebe lands for other lands under the Tithe Acts by award of the Ministry of Agriculture and Fisheries: see Tithe Act, 1842, s. 5, the Tithe Act, 1846, s. 22, and the Tithe Act, 1860, s. 41. Instructions and forms for exchanges under these Acts also may be obtained from the Ministry. As to exchanges in the case of lunatics, see Lunacy Act, 1890, s. 120 (*b*).

Provisions of S. L. Act, 1925.

The S. L. Act, 1925, s. 38 (iii) and s. 40, authorises the tenant for life to make an exchange of the settled land or any part thereof or of an easement, right or privilege of any kind, whether or not newly created, over or in relation to the settled land, or any part thereof, for other land or for any

as to exchanges.

easement, right or privilege of any kind, whether or not newly created, over or in relation to other land, including an exchange in consideration of money paid (*i.e.* by either party) for equality. As to conveyances, see ss. 72, 82 : as to reservations and restrictions, ss. 49 and 50 ; and as to incumbrances, s. 69. See further on all these matters, the note on the Settled Act, *ante*, pp. 587 *et seq.* Where the tenant for life is the owner of the land to be exchanged for the settled land, the trustees of the settlement are to stand in his place for the purpose of exercising the statutory powers : S. L. Act, 1925, s. 68. By s. 71 of the Act money required for equality may be raised by mortgage : see Vol. 2, Prec. XV., p. 107.

As to exchanges by universities and colleges, see Universities and College Estates Act, 1925.

Exchange by parol.

According to Littleton (see s. 62) an exchange of corporeal hereditaments in the same county made by parol is valid if each party enters during the lifetime of the other. Notwithstanding the L. P. Act, 1925, s. 54 (1), replacing the like provisions of the Statute of Frauds, such an exchange appears to be good in equity. See L. P. Act, 1925, s. 55 (*c*), and consider *Morphett* v. *Jones*, 1 Swanst. at p. 181 ; *Pain* v. *Coombs*, 1 De G. & J. 34 ; *Wilson* v. *West Hartlepool Rly. Co.*, 2 De G. J. & S. 475 ; *Maddison* v. *Alderson*, 8 App. Cas. at p. 475 ; *Hodson* v. *Heuland*, [1896] 2 Ch. 428 ; *Bin* v. *Hygate*, [1918] 2 K. B. 314, and the cases cited in Dart., 7th ed., 1036 *et seq.*

Registered land.

Exchanges of registered land can be made under Rule 136, Sched., Form 44. The conveyance of unregistered land in exchange for registered land will be in the ordinary form. Rule 137 contains provisions for carrying out on the Register an exchange of registered land made under an order or award of the Board of Agriculture.

Land in a compulsory district.

A person taking unregistered land in a compulsory district exchanged for other land need not be registered as proprietor under the L. R. Act, 1925, unless money is paid for equality of exchange : see s. 123 (3).

Stamp.

Where no money is paid for equality of exchange, or where the money does not exceed £100, no *ad valorem* stamp is required ; but where the amount exceeds £100, the same stamp is required as on a conveyance on sale : Stamp Act, 1891, s. 73 ; Fin. (1909–10) Act, 1910, s. 73. If the amount exceeds £100, and does not exceed £500, the declaration on p. 525 should be inserted. As to the stamp on contracts for exchange, see note, *ante*, p. 390, as to stamps on contracts for sale.

I.

AGREEMENT *for an* EXCHANGE *of* FREEHOLDS, *for* FREEHOLDS *or* LEASEHOLDS, *and for payment of an agreed* SUM *for* EQUALITY. VARIATIONS *where such sum is to be fixed by* ARBITRATION, *and for* REGISTERED LAND.

AN AGRMT made the —— day of ——, betn A., of, &c., of the one pt, & B., of, &c., of the other pt. Parties.

1. THE SD A. shl in conson of the ppty hby agrd to be conveyed by the sd B. to the sd A. [& of the sum of moy to be pd by the sd B. to the sd A. as hrinar mentd], convey to the sd B. the ppty described in the first schdle hto, with the appurts throf, *&c., as at* p. 391, f. **1**. Agreement for conveyance by A.

2. *Similar agrmt for convce by B. to A. of the freehds or leasehds described in the second schedule, as at* p. 391, f. **1**, *or* p. 398, f. **1**. Agreement for conveyance by B.

3. THE SD B. shl, upon the execution of the convce or assurce to him of the sd ppty of the sd A., pay to the sd A. the sum of £—— for equality of value, *or*, " a sum of moy for equality of value to be fixed, at the joint expse of the pties, by C., of, &c., & D., of, &c., or in case of difference by an umpire, to be appted by such referees in writg bfe enterg on the reference; & the decision of the sd referees or their umpire shl be final," *or*, [The difference in value of the sd premes shl be made good by a paymt in moy, to be made by the sd A. to the sd B., or by the sd B. to the sd A. (as the case may be), & the amt & time of paymt throf, & the mode in wch the sd sum shl be pd, namely, whether by a sum in gross or by instalmts or by way of rent-charge, & the mode in wch the paymt, if postponed, shl be secd, shl be fixed, &c., *as above*, & the sd moy shl be pd or secd accordgly]. Payment of money for equality.

4. PENDING COMPLON the ppty described in the first schdle hto shl be at the risk of the sd B., & the ppty described in the second schdle hto shl be at the risk of the sd A., as to loss or damage by fire, accident, or orwise; but subjt to the consent of the insurance office & paymt to the poly-holder on complon by either of them the sd A. or B. claiming the benefit of the existing poly relating to the ppty to be conveyed to him, of a proportionate pt of the premium for the unexpired term throf, Insurance.

the poly-holder will hold such poly in trust for him, but the poly-holder shl not be bound to keep up or renew the existing poly.

Possession and interest.

5. EACH OF the sd pties shl be entitled to the posson or receipt of the rents & profits of, & shl discharge the outgoings in respt of the premes to be conveyed to him from the —— day of —— next (*a*). [If from any cause whatever other than the wilful default of the sd A. the exchange shl not be completed on or bfe the sd —— day of —— next, the sd B. shl pay to the sd A. intt upon the sd sum of £—— to be pd by him for equality of exchange as afsd, at the rate of £—— p.c. p.a. from that day until complon of the exchange.]

6. *Each party to take with notice of contents of documents produced to his solicitor,* see p. 393, f. **5**: "& of the state of the sd respective ppties as to repairs, insce, party-walls & all other matters."

Abstract and Title.

7. EACH OF them the sd A. & B. shl deliver to the other of them or his solor, within —— weeks from the date hrof, an abstract of his title to the sd respective ppties. The title of the sd A. shl commence, &c. (*b*). The title of the sd B. shl commence, &c. (*b*). *See* pp. 299 *et seq. Add such special provisions relative to each title as may be necessary, & continue with the usual provisions as to making recitals evidence, & as to identity, expenses, &c., common to both titles.*

An alternative form.

[EACH OF the sd pties shl accept the title of the other witht investigation, & witht requiring any abstract of such title or the production of any deeds or other evidence throf.]

Completion (*c*).

8. THE SD exchange shl be completed on the —— day of —— at the office of Messrs. —— at ——, when each of the sd pties, togr with all other necy pties (if any) shl execute or make a pper assurance of the sd ppty belonging to him unto the other of them, free from incumbces [except as afsd]; such

(*a*) *I.e.*, the day fixed for completion of the exchange.

(*b*) Where either party is the registered proprietor, one of the forms at *ante*, pp. 316 *et seq.*, will be substituted as regards the property to be conveyed by him; and the usual clause, giving the other party authority to inspect the register, will be added, as in Prec. V., *ante*, p. 276.

(*c*) Where either party is the registered proprietor, provision will be made for transfer by him by registered transfer, as in f. 17, *ante*, p. 320, *mutatis mutandis*; and the usual provision as to lodging a priority notice will be inserted in reference to the property to be transferred, as in Prec. V., *ante*, p. 276.

assurce to be prepared by & at the expse of the party to whom the same is made.

[*Add any provisions as to covenants to be entered into by either party as on a sale.*]

9–12. *Provisions as to muniments, requisitions, rescission & misdescription as in Prec.* I., p. 395, *substituting in the forms referred to,* "each party hto" *or* "the other party hto" *for* "vendor" & "pchaser," *as the case requires.*

In witness, &c. (*a*).

Two Schdles of Parcels.

II.

AGREEMENT *for* Exchange *of* Freeholds *between a* Tenant for Life *under the* Settled Land Act, *and an* Absolute Owner, *with* Variations *where the* Exchange *is subject to the* Reservation *of a* Right of Way *for* Mining Purposes, *or of* Restrictive Covenants *affecting the land given in* Exchange, *and is made partly in consideration of the* Grant *of a* Right of Way, *for* Mining Purposes, *over other adjoining land belonging to the* Absolute Owner (*b*).

Parties, as in Prec. I., p. 753, whereby it is agrd as follows:

A. contracts as tenant for life.

1. This agrmt is entered into by the sd A. as este owner & tenant for life, of the este known as the X. Este, situate, &c., under a vestg deed, dated & made, &c., & is intended to be carried into effect under the powers of the S. L. Act, 1925.

Conveyance by A.

2. The sd A. shl convey to the sd B. the piece of land, &c., wch is delineated on the plan hto annexed & thron coloured ——, formg pt of the X. Este afsd [inclusive of the site of so

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(*a*) The L. P. Act, 1925, s. 49, replacing the V. & P. Act, 1874, s. 9 (relating to applications to the Court by summons) applies (sub-s. 3) to a contract for the exchange of any interest in land and to this extent overrules *Re British Land Co. & Allen*, 44 Sol. J. 593.

(*b*) As to the provisions of the S. L. Act, 1925, relating to exchanges, see *ante*, p. 751; and for a conveyance in exchange by a tenant for life, see Prec. VII., *post*, p. 764. As to purchases by a tenant for life, see *ante*, p. 390; and for a form of contract for sale by a tenant for life, see *ante*, p. 402.

much of the proposed new road shown on the sd plan as passes through the sd X Este] with the appurts throf & the fee simple in posson throf free from incumbces (*c*) [but subjt as hrinar expressed] in conson & exchange for the pieces of land hby agrd to be conveyed by the sd B. [& the right of way or road hrinar agrd to be grted in exchange by the sd B. through the este of the sd B. known as the Y. Este] [& of the sum of moy to be pd by the sd B. for equality] in mner hrinar mentd.

Reservation of right of way.

[**3.** The sd convce to the sd B. shl be subjt to the reservon hrinar agrd to be made of the right of way & road hrinar mentd, so far as the same passes through the land hrinbfe agrd to be conveyed to the sd B.; & shl contain such covts on the pt of the sd B. restrictive of the user of the sd land for bldg & other pposes as hrinar mentd.]

Conveyance by B.

4. In conson & exchange for the piece of land hrinbfe agrd to be conveyed to him the sd B. shl by a subsidiary vestg deed containg all pper parlars (*d*) grt & convey to the sd A. the piece of land, *parcels*, with the appurts throf & the fee simple in posson throf free from incumbces (*c*) [togr with the right of way & road hrinar mentd so far as the same passes through the sd este of the sd B. known as the Y. Este, wch is delineated on the sd plan & thrin coloured ——].

Right of way.

[**5.** The sd A. & his succors in title to the sd X. Este, other than the land agrd to be exchanged, & his & their lessees & tenants shl be entitled, in common with the sd B. & all other psons for the time being entitled thereto, to a right of way & road & with or witht horses & other animals, carts, carriages, motors, cycles, & other vehicles for the convce of mineral produce, &c., *state pposes*, through, along & over the new road to be made by the sd B. as hrinar mentd through the sd Y. Este, & the land hby agrd to be conveyed to the sd B., from —— to the high road leadg from —— to ——, as shown on the sd plan, such right of way & road to be secd as to the pt throf wch passes through the land hrinbfe agrd to be conveyed to the sd B., by way of reservon as afsd, & as to the pt throf wch passes through the sd Y. Este by way of grt & convce in exchange as afsd.]

(*c*) Where there are leases and tenancies or rights affecting parts of the land to be conveyed, say "except the sevl leases & tenancies [& the rights], &c.," as in f. 1, p. 391.

(*d*) See S. L. Act, 1925, s. 10.

[**6.** The sd B. shl at his own expse make & construct the sd road (*a*), includg the portion throf passg through the land hrinbfe agrd to be conveyed to the sd B., of an uniform width of not less than —— feet throughout, & pperly metal the same to the satisfon in all respts of the surveyor of the sd A., & complete the same on or bfe the —— day of ——, & at all times keep in repair & maintain the sd road in good order & fit for use & traffic until the same shl be adopted by the District Council or other local authority, & shl in the sd assurce or deed enter into a pper covt in that behalf.] Making road.

7. The sd B. shl in the assurce of the land hby agrd to be conveyed to him covt as follows, namely, *restrictions as to bldg, &c., on* " the land hby agrd to be conveyed to the sd B.," *see* pp. 361 *et seq.* The covts to be entered into as afsd shal be framed so as on the one hand, to bind so far as possible the land hby agreed to be conveyed to the sd B. into whosesoever hands the same may come &, on the other hand, to enure for the benefit of & be annexed to the sd X. Este other than the land agrd to be exchanged. Restrictive covenants as to building.

8. *Paymt of money for equality,* p. 753 ; *the money to be paid* " at the option of the sd A. to the trees of the settlemt referred to in the sd vestg deed or into Court." *If the amount is to be fixed by arbitration, add* " but so that such award shl not be binding unless & until it is confirmed in mner hrinar appearg." Payment of money for equality.

[**9.** *Provision as to insurances,* p. 753.]

10. *Possession and, if required, interest on equality money,* p. 754.

11. Each of the sd pties shl be deemed to have full notice of the state of the ppty to be conveyed to him as to repairs, insurance, [party walls] & all other matters. Notice of state of properties (*b*).

12. *Abstract & title,* p. 754. *Add such special provisions relative to each title as may be necessary, and continue with the usual provisions as to making recitals evidence, & as to identity, expenses, &c., common to both titles.*

(*a*) The S. L. Act, 1925, s. 56, authorises the expenditure of capital money in the construction, &c., of roads, &c. ; see also s. 73 (iii.) and Third Sched., Part I. (ix.) (xviii.).

(*b*) Where there are leases, tenancies or rights affecting the properties, provision should be made requiring each party to take with notice of the contents of the documents by which such incumbrances were created: see *ante*, p. 393, f. 5.

Completion.

13. This agrmt shl, subjt to the stipulons hrinbfe contd, be completed & carried out on the —— day of —— at the office of Messrs. ——, the solors of the sd A., by the execution by the sd respective pties & all other necy pties (if any) of pper assurces, or deeds, to be prepared by & at the expse of the grantees thrunder resply.

14. The sd A. shl not be required to enter into any covt for title except the usual implied staty covt that he has not incumbered.

15–18. *Provisions as to munimts, requisitions, rescission & misdescription, as in Prec.* I., p. 395, *substituting in the forms referred to,* "each party hto" *or* "the other party hto" *for* "vendor" *and* "purchaser," *as the case requires.*

Award of arbitrator when binding (c).

[19. The award of the arbitrator as to the sum payable for equality of value shall not be binding on the parties hrto unless & until, within one month after his award shl have been given or within such further time as the arbitrator shl in writg approve, the parties hrto shl agree to an exchange on the terms of such award in such modified manner as they may agree; but if no agreemt shl be entered into within the time afsd, then this contract shl become void, except that the costs of the remuneron of the arbitrator & of the negoton & preparon of this contract shl be borne by the parties hrto in equal shares.**]**

In witness, &c.

III.

AGREEMENT *for an* Exchange *to be carried out by the* Ministry of Agriculture and Fisheries (*a*).

Parties.

AN AGRMT made, &c., Betn A., of, &c., of the one pt, & B., of, &c., of the other pt. *Recitals showg the title of the parties;*

Recitals.

And whas the sd A. has agrd with the sd B. to make such

(*c*) As to the necessity of this clause, see *Re Earl of Wilton's S. E.*, [1907] 1 Ch. at p. 55.

As to exchanges by the Board of Agriculture and Fisheries.

(*a*) See Inclosure Act, 1845, ss. 16, 147—151; Act of 1846, ss. 9 & 11; Act of 1847, ss. 4 & 6; Act of 1848, ss. 13 & 14; Act of 1849, ss. 7 & 11; Act of 1852, ss. 17 & 32; Act of 1854, ss. 1—5 & 8; Act of 1857, ss. 4, 5, 6 & 8; Inclosure Act, 1859, s. 13; Inclosure, &c., Act, 1868, s. 2; and the Commons Act, 1876, s. 33; and the Act of 1899, s. 19. See also *ante*, p. 751.

exchange as is hrinar mentd: NOW IT IS HBY AGRD as follows:

1. THE SD A. shl give to, & cause to be vested in the sd B. as este owner in respect of the fee simple thereof the ppty described in the first schdle hto, with the appurts, in exchange for the ppty described in the second schdle hto, with the appurts, wch shl be given by the sd B. to & caused by him to be vested in the sd A. as este owner in respect of the fee simple thereof. Agreement to exchange.

2. THE EXCHANGE shl be effected within —— calr months from the date hrof, & shl be carried out & perfected by the Ministry of Agriculture & Fisheries under the provons of the Acts of Parliament relatg to the exchange of lands. Completion.

3. ALL THE costs & expses of & incidental to these psnts, & the carrying out & perfectg of the sd exchange, shl be borne & pd as to one moiety by the sd A., & as to the other moiety by the sd B. Costs.

4. IF BY reason of the default of either of the sd pties hto the sd exchange shl not be perfected within —— months from the date hrof, it shl be lful for the party not in default, at any time after the expiron of such period, to determine this agrmt by notice in writg to the other of the sd pties [in wch case the party in default shl reimburse the other party on demand all costs & expses incurred by him in relation to the sd intended exchange]. Rescission.

IN WITNESS, &c.

Two Schedules.

IV.

AGREEMENT *between* TRUSTEES *for* SALE *and* URBAN AUTHORITY (*b*) *for an* EXCHANGE *of* RIGHTS *over* SMALL STRIPS *of* LAND *to* WIDEN *and* IMPROVE *a* ROAD.

AN AGRMT made, &c., BETN A., of, &c., B., of, &c., & C., of, &c., *trees for sale under the will & codl of D. deced or under an* Parties.

(*b*) By the Public Health Act, 1875, s. 149, "streets" (as defined in s. 4) are vested in the urban authority, which takes only such property in them as is necessary for their control, protection and maintenance as public highways: *Tunbridge Wells Corpn.* v. *Baird*, [1896] A. C. 434; "Streets."

assent dated, &c. (hrinar called the trees), by E., of, &c., their agent of the one pt, & the Mayor, Aldermen, & Burgesses of the Borough of ——, actg by their Council as the Urban Authority of the sd borough (hrinar called the Corpn), by F., of, &c., town clerk of the sd borough, their agent (*c*) of the other pt : WHAS the trees as such trees for sale as afsd are the este owners in respect of the fee simple of certn freehd ppty known as the —— Este, pt of wch abuts upon & has a frontage to —— Road, in the borough of —— afsd & have all the powers in relation thereto, includg power to consent to the widening of highways, conferred upon a tenant for life by s. 56 of the S. L. Act, 1925 (*d*) : AND WHAS the sd —— Road, so far as it abuts upon the sd —— Este, now is of irregular width & in some pts considerably narrower than the minimum width now allowed by the bye-laws of the sd borough : AND WHAS it will be mutually advantageous to the pties hto for a give & take line to be arranged betn them as shown on the plan annexed hto by the red line marked M. N, with a view to the sd —— Road being improved & widened to a minimum width of — feet ; NOW IT IS HBY AGRD as follows :—

Recitals.

Witnesseth.

Adjustment of boundary.

1. THE TREES & the Corpn shl adjust the boundary of the sd Este abuttg upon the sd —— Road by adoptg as its boundary the sd line shown on the sd plan & marked M N.

Grant of right of way.

2. THE LAND coloured pink on the sd plan shl be thrown into the sd —— Road as a public highway to be made & repaired by the Corpn (*e*), & the trees shl, at the cost of the Corpn, do all such acts & execute all such instrumts as may be required for giving effect to this agrmt.

Lodge Holes Colliery Co., Ltd. v. *Wednesbury Corpn.*, [1908] A. C. 323 ; affirming [1905] 1 K. B. 823 ; and this is the case even though prior to the road vesting in the urban authority the site had been acquired by Turnpike Trustees in fee : *Finchley Electric Light Co.* v. *Finchley U. D. C.*, [1903] 1 Ch. 437.

If the road is discontinued as a highway, the authority ceases to have any property in it, and therefore cannot convey it by sale or exchange : *Rolls* v. *Vestry of St. George the Martyr*, 14 Ch. D. 785 ; see also *Wandsworth Board of Works* v. *United Telephone Co.*, 13 Q. B. D. 904. As to the procedure for widening a highway, see Highway Act, 1835, s. 82, and for the diversion or closing of a highway, see *ib.* ss. 83 to 92. *Rex* v. *Derby Justices*, [1917] 2 K. B. 802.

(*c*) See L. P. Act, 1925, s. 74 (2).

(*d*) See L. P. Act, 1925, s. 28, and S. L. Act, 1925, s. 56.

(*e*) See the Public Health Act, 1875, s. 146.

3. The trees shl not be called upon to show any title to the land coloured pink on the sd plan other than such as appears from the sd will *or* the sd assent. No title to be shown.

4. The corpn shl forthwith at their own expse make & construct a good & substantial post & wire fence similar to that boundg the other portion of the —— Este abuttg upon —— Road afsd along the sd give & take line betn the sd points marked M & N on the sd plan. Street to be fenced.

5. The costs of the trees as betn solor & client of & incidental to the negotiation, preparon, or execution of these psnts, & of giving effect to this agrmt, & of any proceedgs for closing the highway over the land coloured green on the sd plan, & the sum of £—— for surveys & valuon shl be borne by the Corpn & pd by them to the trees upon the sd highway being closed, or, if the same shl not be closed bfe the —— day of —— or on such later day as the trees shl in writing approve, then on such last mentd day. Costs.

6. The corpn shl at their own expse take the necy steps to have the existg highway over the land coloured green closed, & unless such highway shl be duly closed within —— calr months from the date of these psnts or on such later day as the trees shl in writing approve, this agrmt (except the last precedg clause) shl be void. Proviso in case the highway is not stopped.

In witness, &c.

V.

CONVEYANCE *of* Freeholds *with the concurrence of a* Mortgagee, *by way of* Exchange *for freeholds conveyed by a* Deed *of even date.* Variation *where* Money *is received or paid for* Equality *of* Exchange.

Parties, A., *owner of ppty conveyed by this deed*, 1; B., *mtgee*, 2; C., *owner of ppty conveyed by deed of even date*, 3. *Recite A.'s ownership* " of the ppty described in the first pt of the schdle hto " *subjt to mtge to B. for securg* £—— *& intt.*, p. 463, f. **7.** Recital.

And whas the sd A. has agrd with the sd C. for the exchange of the sd ppty hby grted for a piece of land belonging to the sd C. situate, &c., wch is described in the second pt of the schdle hto: [And for the paymt by the sd C. to the sd A., *or*, " by the sd A. to the sd C.," of the sum of £—— for equality of Agreement. Sum to be paid for equality.

Deed of even date.

exchange]; *agrmt of B. to concur*, p. 476, f. **24.** And whas by a deed bearg even date herewith, & made, &c., the sd piece of land agrd to be given in exchange by the sd C., as afsd, has been conveyed to the sd A. (*a*) in fee simple in conson of the assurce hby made [& of the paymt by the sd A. to the sd C. of the sd sum of £—— agrd to be pd for equality of exchange as afsd], NOW THIS DEED WITNESSETH that, in psuance of the sd agrmt & in conson of the convce contained in the sd deed of even date herewith [& of the sum of £—— now pd by the sd C. with the consent of the sd B. to the sd A. for equality of exchange, the rect whrof is hby acknowed], the sd A., **as benefl owner**, hby grts & conveys & the sd B. **as mtgee**, at the request of the sd A. & to the intent that the sd mtge term of 3,000 yrs shl merge in the freehold reversion of the ppty hby assured hby surrenders & releases unto the sd C., *parcels*, p. 480; To hold the same Unto the sd C., in fee simple: [*Acknowmt by B. as to munimts retained*, p. 515]. [*Statemt as to value*, p. 525.] In witness, &c.

Wit-nesseth.

Grant.

Haben-dum.

Schdle of Parcels.

VI.

CONVEYANCE *in* Exchange *by* One Deed (*b*) *of* Free-holds *between* Estate Owners *for* Straightening Boundaries. Agreement *as to* Party-wall *and* Reservation *of* Right *to* Light.

Recitals. Title of parties.

Parties, A., *owner of one ppty*, 1; B., *owner of other ppty*, 2. Whas the sd A. is the este owner in respect of the fee simple of the land with the bldgs thron, edged resply green & blue on the plan hto annexed free from incumbces & the sd B. is the este owner in respect of the fee simple of the land with the bldgs thron, edged resply pink & brown on the sd plan free from incumbces wch last-mentd land adjoins or is contiguous to the sd land of the sd A.: And whas the sd A. & B. have agrd to exchange the sd pieces of land edged resply blue & brown

Agree-ment for exchange.

(*a*) It will be a matter of agreement between A. and B. if the land taken by A. is to be subject to B.'s mortgage.

(*b*) To be executed in duplicate, which is preferable to having two deeds.

on the sd plan (formg pt of the ppty to wch they are resply entitled as afsd), with the object of straighteng the boundary lines betn their respt ppties wch are uneven & irregular, & to adjust & settle such boundary lines in mner hrinar appearg, & as pt of the terms of the sd exchange it was agreed that such rights of light & air & other rights as are hrinar expressed should be reserved to the sd B. for the benefit of & so as to be annexed to the land retained by him. NOW THIS DEED WITNESSETH that in psuance of the sd agrmt & in conson of the convce in exchange hrinar made by the sd B. & of the premes, the sd A., **as benefl owner**, hby grts unto the sd B. ALL THAT piece of land containg —— square feet or thrabouts & edged blue on the sd plan hto annexed; TO HOLD UNTO the sd B. in fee simple. *Similar grant by B. to A. of the piece of land edged brown* except & reservg to the sd B. in fee simple the free & uninterrupted access of light & air at all times hrafter over the sd piece of land edged brown on the sd plan, to the blgs of whatsr height & in whatsr poson wch shl for the time being be erected or stand on the land of the sd B., edged pink on the sd plan, or any pt throf & to all windows or opengs wch may from time to time exist in such bldgs, & with liberty to the sd B. & his succors in title to the sd land coloured pink, from time to time to increase the height of the sd bldgs, & to rebuild, add to, or alter the same in such position & mner & with such windows or opengs for light or air as may be thought fit. AND IT IS HBY AGRD that the sd piece of land edged brown shl at all times hrafter be kept by the sd A. & his succors in title, open & unbuilt upon, & that no erection or thing shl at any time be placed thron wch may in any degree obstruct or interfere with such access of light or air so reserved as afsd; AND IT IS HBY FURTHER AGRD & declared that the straight line marked on the sd plan betn the points L, M, N & O, shl henceforth be the boundary line betn the sd ppties of the sd A. & B. & their respve succors in title: AND FURTHER that the wall now standg betn the points marked —— on the sd plan shl be used & maintained as a party-wall (*b*) betn the sd ppties of the sd A. & B. [*Acknowmt & undertakg by A. as to munimts retained by him. The like by B.*, p. 515.] IN WITNESS, &c.

And as to boundary, party-wall and light.

Witnesseth.

First grant.

Second grant.

Reservation and grant of light, &c. (*a*).

Agreement as to boundary.

Party-wall.

(*a*) See *ante*, p. 352, note.

(*b*) As to the effect of constituting a wall a party-wall, see L. P. Act, 1925, s. 38.

VII.

CONVEYANCE *and* SUBSIDIARY VESTING DEED *of* FREEHOLDS *by way of* EXCHANGE *between a* TENANT *for* LIFE *under the* SETTLED LAND ACT *and an* ABSOLUTE OWNER, *with mutual grants of* RIGHTS OF WAY *and* RESTRICTIONS *as to* BUILDING, MONEY *being paid for* EQUALITY *of* EXCHANGE (*d*).

Parties. THIS DEED OF EXCHANGE & SUBSIDIARY VESTING DEED made BETWN A. *tenant for life*, of, &c., of the first pt; B., of, &c., & C., of, &c., *trees of settlemt* (hrinar called the trees), of the second pt; & D., *absolute owner*, of, &c., of the third pt:

Vesting deed. WHAS by a ppal vestg deed, dated, &c., & made [psuant to s. 37 of the Settled Land Act, 1925] betwn, &c., the lands first hby grted & the land over wch the rt of way first hrinar described is hrby grnted were declared to be vested with other ppty comprisg the X. este in the sd A. in fee simple, Upon the trusts & subjt to the powers & provons upon & subjt to wch under the settlemt thrin referred to or orwise the same ought from time to time thenceforward to be held, *or* "Upon the trusts declared concerng the same by a trust instrumt bearg even date with the deed now in recital": AND by the same deed it was declared that the trees were the trees of the sd settlemt for the pposes

Title of absolute owner. of the Settled Land Act, 1925: AND WHAS the sd D. is the este owner in respect of the fee simple of the Y. Este, wch includes the lands, secondly hby grted, & the land over wch the right of way secondly hrinar described is hby grted:

Agreement. AND WHAS the sd A., as such este owner & tree as afsd, has agrd with the sd D. for the exchange of the lands first hby grted for the lands secondly hby grted; & as pt of the terms of the sd exchange it was agrd betn the sd A. & D. that the right of way first hrinar described & hby grted shd be grted to the sd D. in fee simple & the rt of way secondly hrinar described & hby grted shd be grted by way of subsidiary vestg deed to the sd A. in fee simple, & that these psnts shd contain such mutual restrictive covts as to bldg & as to the user in other respts of the respective

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(*d*) For an agreement for exchange by a tenant for life, see Prec. II. and the preliminary note, *ante*, p. 751. As to exchanges of registered land, see preliminary note, p. 752. As to the entry on the register of the right of way, see L. R. R. 215; and of the restrictive covenants, see *ante*, p. 361.

pieces of land & premes hby exchanged as are hrinar contained ; & further that the sd B. & C. shd, out of capital moy in their hands subjt to the trusts of the sd settlemt, pay the sum of £—— to the sd D. for equality of exchange ; NOW THIS DEED WITNESSETH as follows :— Witnesseth.

1. In psuance of the sd agrmt, & in conson of the convce by way of exchange hrinar made by the sd D., the sd A., **as tree,** by virtue of the powers vested in him by the S. L. Act, 1925, & of every other power him enablg, hby grts unto the sd D., *Parcels by reference to schdle & plan, see* p. 483, Togr with full right & liberty for the sd D., & his succors in title, owners & occupiers of the Y. Este, &c., *right of way, see* p. 487 ; To hold Unto the said D. in fee simple, subjt to the subsistg leases & tenancies affectg the said respective pieces of land hrinbfe conveyed. Grant by tenant for life. Habendum.

2. In further psuance, &c., & in conson of the convce by way of exchange hrinbfe made by the sd A., & of the sum of £—— now pd to the sd D. by the sd B. & C. by the direction of the sd A. out of such capl moys as afsd (the receipt, &c.), the sd D., **as benefl owner,** hby grts unto the sd A., *Parcels by reference to schdle & plan, see* p. 483, Togr with full right & liberty for the sd A. & his succors in title, owners & occupiers of the X. Este, &c., *right of way,* p. 487 ; To hold Unto the sd A. in fee simple subjt to the subsistg leases & tenancies affectg the same, Upon & subjt to the same trusts & powers as are declared by the sd ppal vestg deed by refce as afsd with respect to the ppty thrin comprised. Grant by owner in fee. Habendum.

3. The trees are the trees of the settlemt for the ppses of the Settled Land Act, 1925.

4. The power of appointg a new tree or new trees of the settlemt is vested in the sd A. durg his life.

5. The sd A. to the intent & so as to bind (so far as practicable) the land & premes hby taken in exchange by him as afsd into whosesoever hands the same may come, & to benefit & protect the Y. Este, hby covts with the sd D. that he the sd A. & his succors in title will, &c., *Stipulations restrictive of bldg, &c., on the lands taken by A. in exchange, see* pp. 365, 366. Covenant by tenant for life restrictive of building.

6. The sd D. to the intent & so as to bind (so far as practicable) the land & premes hby taken in exchange by him as afsd into whosesoever hands the same may come, & to benefit & protect the X. Este hby covts with the sd A. that he the sd D. Covenant by owner restrictive of building.

will, &c., *Sipulations restrictive of bldg, &c., on lands taken by D. in exchange, see* pp. 365, 366.

[**7.** *Acknowmt by A. with D., & acknowmt & undertaking by D. with A., as to munimts retained by them resply.*, p. 515.]

[**8.** *Statement as to value*, p. 525.]

In witness, &c.

Two Schdles of Parcels [*& two of muniments.*]

INDEMNITY.

I.

INDEMNITY *to a* PURCHASER *against a* PERPETUAL RENT-CHARGE *by the* CREATION *of another* RENT-CHARGE *out of part of the Property subject to the original* RENT-CHARGE (*a*).

PARTIES, A., *vendor*, 1; B., *pchaser*, 2; *Recite convce of even date by A. to B., of* "the ppty shortly described in the first schdle hto:" AND WHAS the sd ppty described in the first schdle hto togr with the ppty described in the second schdle hto to wch the sd A. is absolutely entitled as the este owner throf in fee simple is subjt to a perpetual yrly rent-charge of £—— charged thron with the usual powers & remedies for securg paymt throf by an indre, dated, &c.; AND WHAS upon the

Recitals.

Convey-ance of even date.

Creation of rent-charge.

Contract

(*a*) The rule against perpetuities does not apply and is deemed never to have applied to the creation of a rent-charge by way of indemnity against another rent-charge: L. P. Act, 1925, s. 162 (1) (*b*). Such an indemnity which, before 1926, was usually given in preference to a grant, by way of indemnity, of powers of distress and entry, can now seldom be required. The necessary powers of entry & distress and of perception of profits are now conferred by the L. P. Act, 1925, s. 190, upon the purchaser of land affected by a rent-charge where the whole or part of the rent-charge is intended to be borne by other land belonging to the vendor. See *ante*, p. 240.

By s. 189 of the L. P. Act, 1925, it is enacted that a power of distress given by way of indemnity against a rent or any part thereof payable in respect of any land or against the breach of any covenant or condition in relation to land, is not and shall not be deemed ever to have been a bill of sale within the meaning of the Bills of Sale Acts, 1878 and 1882, as amended by any subsequent enactment. Such a power had previously been thought to be invalidated by those Acts. Hence the preference formerly given to an indemnity such as that in the text.

The provisions of the S. L. Act, 1925, ss. 1 (1) (*v*) and 13, have entirely superseded the practice which was sometimes followed of limiting terms of years by way of indemnity against jointure rent-charges and portions.

for sale and indemnity.

sale by the sd A. to the sd B. of the sd ppty described in the first schdle hto, it was agrd that the sd A. shd execute & give to the sd B. such indemnity against the sd rent-charge as is hrinar contained ; NOW THIS DEED WITNESSETH as follows :—

Witnesseth.

Covenant.

Rent-charge to be borne by property in second schedule.

1. In psuance of the sd agrmt, & in conson of the premes the sd A. hby covts with the sd B. that the sd yrly rent-charge of £—— shl henceforth be wholly borne by & discharged out of the sd ppty described in the second schdle hto in exoneron of the sd ppty described in the first schdle hto ; & further that he the sd A., will at all times hrafter keep the sd B., & his succors in title to the ppty described in the first schdle hto effectually indemnified against the sd rent-charge, & all claims, demands, costs & expses in respt throf.

Grant of indemnity rent-charge.

2. In further psuance of the sd agrmt, & in conson of the premes, the sd A. hby grts unto the sd B. a perpetual yrly rent-charge of £——, *the amount of the rent-charge to be indemnified against*, to be charged upon & issuing out of the ppty described in the second schdle hto, & to be payable by qtrly paymts on the —— day of ——, &c., *the days of paymt to be the same as those of the rent-charge to be indemnified against*, witht any deduction, the first of such paymts to be made on the —— day of —— next : To hold the same unto the sd B. in fee simple.

Rent-charge to be indemnity to purchaser.

3. The sd yrly rent-charge of £—— hby grnted is created by way of indemnity to the sd B. & his succors in title to the ppty described in the first schdle hto against the sd yrly rent-charge of £—— created by the sd indre of, &c., & all arrears throf, & all powers & remedies for recoverg & enforcg paymt of the same, & all actions, proceedings, claims, & demands for & in respt of the sd last-mentd rent-charge or any pt throf.

4. If and whenever any distress, entry, mtge, sale or demise shl be made on or of the ppty described in the first schdle hto, or any pt throf, or any claim or demand shl be made upon the sd B., or his succors in title, in respt of the sd yrly rent-charge of £—— created by the sd indre of, &c., or the arrears throf, then the sd B., or his succors in title, shl apply the sd yrly rent-charge hby created, & all moys reced by him or them under any exercise of the powers & remedies for the recovery throf, in satisfon & discharge of the sd rent-charge limited by the sd indre of, &c., & the arrears throf, & of all costs & expses wch the sd B., or his succors in title, shl from time to time pay or incur by reason or in consequence of such distress, entry, mtge, sale

demise, claim or demand, as afsd, or in or about the execution of the powers of these psnts.

5. Subjt to the indemnity hby provided, the sd B. shl stand possed of the sd rent-charge hby created In trust for the sd A. in fee simple. Subject thereto to be in trust for vendor.

In witness, &c.

[*Two schdles.*]

II.

DEED *of* Indemnity *by* Vendor *to* Purchaser *in respect of defective* Title, *the* Indemnity *being in the form of* Absolute Covenants *for* Title.

Parties, A., *vendor*, 1; B., *pchaser*, 2: Whas by a deed bearg even date with these psnts, & made, &c., a messe farm & lands known as ——, situate, &c., comprising —— acres or thrabouts, have for the conson thrin mentd been conveyed by the sd A. to the sd B. in fee simple, & in the sd deed the usual qualified covts by the sd A. for title to & further assurce of the premes are implied by law by his being expressed to convey as benefl owner: And whas upon the investigon of the title to the sd ppty the deeds & documts produced by the sd A. as evidencg his title thereto appeared to show a title to —— acres only, but the whole of the premes conveyed by the sd deed of even date herewith, have for upwards of —— yrs past been in the undisturbed ownership & enjoymt of the sd A., or the psons under whom he claims title: And whas the sd B. accepted the title to the premes & completed the pchase throf as afsd upon an agrmt that the sd A. should enter into

Recitals. Conveyance of even date. Defect in title (*a*). Acceptance of title and contract for indemnity.

(*a*) The following is a form of recital where the investigation of the title is dispensed with on an agreement that the vendor shall absolutely guarantee it:—

"And whas upon the sale of the premes to the sd B. an investigon into the title of the sd A. was dispensed with by the sd B., & the sd pchase has been completed upon an agrmt that the sd A. shd give an absolute guarantee of such title, & shd for that ppose enter into absolute covts for the title to & further assurce of the premes in mner hrinar expressed, wch covts are intended to override," *&c., as in the text.* Recital where investigation of title dispensed with.

absolute covts for the title to & further assurce of the same as hrinar expressed, & wch covts are intended to override & be in no wise controlled by the qualified or restricted covts implied in the sd deed of even date herewith as afsd: NOW THIS DEED WITNESSETH that in psuance of the sd agrmt & in conson of the premes, the sd A. hby covts with the sd B., THAT, in addition to the qualified or restricted covts by the sd A., for the title to & further assurance of the sd premes wch are implied in the sd convce of even date herewith, the same or the like covts for the title to & further assurce throf shl be deemed to be thereby implied on the pt of the sd A., but witht any qualificon or restriction as regards the psons to whose acts, defaults, or omissions, such covts extend. IN WITNESS, &c.

Witnesseth.

Extension of statutory covenants for title.

III.

DEED *of* INDEMNITY *from* VENDOR *to* PURCHASER *where* TITLE DEEDS LOST.

Recitals.

Loss of deeds.

PARTIES, A., *vendor*, 1; B., *pchaser*, 2: *Recite convce of even date:* AND WHAS the munimts of title [specified in the schdle hto] wch relate to the premes so grted & assned resply cannot be found & are believed to have been lost: AND WHAS the sd A. has agreed to execute & give to the sd B. such covenant of indemnity in respect of the loss of the sd munimts as is hrinar contained: NOW THIS DEED WITNESSETH that in conson of the premes the sd A. hby covenants with the sd B. that he the sd A. will use his best endeavours to discover the sd munimts & will, in case the same or any of them shl be found, forthwith deliver the same whole, uncancelled, & undefaced, or in the condon in wch the same shl be found, to the sd B., or his succors in title, & will at all times hrafter keep indemnified the sd B., & his succors in title, & all & every pt of the premes so grted & assned resply as afsd against all mtges & incumbces whatsr in anywise affectg the premes, or any of them, or any pt throf other than incumbces to be created by the sd B., or his succors in title, & against all actions, proceedings, claims, & demands, costs, damages, & expses, wch may be brought or made against him or them, or wch he or they may sustain or incur by or by

means of any pson or psons who shl or may have or claim any este, title, or intt in or to the premes, or any pt throf, other than psons claimg under the sd B.

In witness, &c.

[*Schdle.*]

IV.

DEED *of* Indemnity *to* Tenant *paying* Rent *where* Title *in* Dispute.

Parties, A., *landlord*, 1; B., *tenant*, 2: Whas an action [dispute] is now pendg betn the sd A. & other psons concerng the right to or intt in the reversion of the house & premes situate at, &c., wch are now occupied or held by the sd B., under a lease throf, dated, &c., & made betn, &c.: And whas the sd B. has nevertheless agrd to pay the rent of the sd house & premes as the same shl grow due to the sd A. upon the sd A. agreeing to indemnify him in respt throf: NOW THIS DEED WITNESSETH that in conson of the premes the sd A. hereby covts with the sd B. that he the sd A. will repay on demand to the sd B. all such rent, sums of moy, costs, & damages as the sd B., or his assns, shl by due process of law or orwise be compelled to pay, & all costs & damages wch he or they shl orwise sustain by reason of his or their paying the sd rent or any pt throf to the sd A. in mner afsd.

Recitals. Action pending. Agreement to pay rent.

In witness, &c.

V.

DEED *of* Indemnity *by* Husband *and* Wife *to* Trustees *making an* Unauthorised Transfer *of part of the* Settled Funds (*a*).

Parties, A. & B., his wife, 1; C. & D., *trees*, 2. *Recite settlemt on marre of A. & B. of the wife's funds in trust for the*

(*a*) The wife should make a will under her power of appointment, so that the settled funds (inclusive of the part sold out) may be liable to satisfy the covenant: *Re Parkin*, [1892] 3 Ch. 510; *Beyfus* v. *Lawley*, [1903] A. C. 411; *Re Hadley*, [1909] 1 Ch. 20; *Re Pryce*, [1911] 2 Ch. 286; *Re O'Grady*, [1916] 2 A. C. 231; and see *Re Guedalla*, [1905] 2 Ch. 331; *Re*

Powers of married women to dispose of reversion.

wife for life with restraint on anticipon, remainder to the issue & in default of issue for the wife if survivg the husbd absolutely; & if she should predecease him for her testy appointees or next of kin. That there has been no issue, & wife is past the age of child bearg.

Agreement for transfer.

AND WHAS the sd trees have at the request of the sd A. & B. agrd to sell out the sum of £—— Stk formg pt of the sd settled funds, & to pay the proceeds throf to the sd A., on

Sale and payment.

havg such indemnity as is hrinar contained. AND WHAS the sd sum of stk has been sold accordgly & the net proceeds throf (amtg to £——) have been pd by the sd trees to the sd

Witnesseth.

A., as the sd A. & B. do hby acknowe. NOW THIS DEED WITNESSETH that in psuance, &c., & in conson of the

Covenant of indemnity.

premes each of them the sd A. & B. hby covts with the sd C. & D. (*b*), that they the sd A. & B. will at all times keep the sd C. & D. & their respve repves effectually indemnified against all claims & demands, actions, & proceedgs on the pt of the sd A. & B., or either of them, or their respve repves, or any of them or any other pson or psons whomsr & all costs, charges,

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of settled funds.

Imray, 50 Sol. J. 59; *Re Benzon*, [1914] W. N. 156. The appointed fund must necessarily by s. 4 of the M. W. P. Act of 1882 be liable (irrespectively of the terms of the appointment) to satisfy all the debts and engagements of the wife incurred since 1882 *pari passu*; but if the covenant was entered into before the 5th December, 1893, it is invalid unless she had a separate estate at the date of the covenant: *Re Fieldwick*, [1909] 1 Ch. 1. The indemnity therefore, so far as the wife is concerned, is altogether precarious.

Liability of trustees for paying capital moneys to woman restrained from anticipation.

Under the old law the payment of the fund to the wife under such circumstances did not disentitle her to call for payment over again in the event of her surviving her husband (even in case of fraud: *Arnold* v. *Woodhams*, L. R. 16 Eq. 29; *Stanley* v. *Stanley*, 7 Ch. D. 589); since the restraint on anticipation effectually prevented her from giving a valid receipt for the capital of the fund; and even if she were not so restrained, such anticipatory payment would have been invalid on the principle of *Whittle* v. *Henning*, 2 Ph. 731; but by the T. Act, 1925, s. 62, the beneficial interest of a married woman may now in such a case be impounded as an indemnity to the trustees, although she is restrained from anticipation: *Griffith* v. *Hughes*, [1892] 3 Ch. 105; *Re Holt*, [1897] 2 Ch. 525; but see *Bolton* v. *Curre*, [1895] 1 Ch. 544. Even if the beneficiary obtained no benefit from the breach his interest, if he instigated the breach, may be impounded: *Fletcher* v. *Collis*, [1905] 2 Ch. 24; and see Withers on Reversions, 102. As to the power of the Court to dispense with the restraint under the L. P. Act, 1925, s. 169, see Wolst. Conv. Acts, 11th ed., p. 425; *Re Little*, 40 Ch. D. 418; *Re Pollard*, [1896] 2 Ch. 552; *Paget* v. *Paget*, [1898] 1 Ch. 470; and see *Hall* v. *Hall*, [1911] 1 Ch. 487.

(*b*) This operates as a several covenant with each of the covenantees: L. P. Act, 1925, s. 81.

& expses in respt of the sd sum of £—— Stk so sold as afsd or the dividends or income throf or in any way arisg out of or consequential on such sale & paymt as afsd or orwise in respt of the premes. In witness, &c.

VI.

DEED *of* Covenant *and* Charge *by way of* Indemnity *to a* Trustee *making an* unauthorised Investment (*a*).

Parties, A., 1; B., 2: Whas by virtue of an indre, dated, &c. (being the settlemt made on the marre of the sd A. with K. his psnt wife) the sum of £—— —— Stk (wch was at the date of the sale hrinar mentd standg in the name of the sd B. as the sole tree of the sd settlemt) was settled Upon trust (among other things) that the sd B. shd either continue the same in its existg state of investmt, or shd, with the consent of the sd A., sell the same, & invest the proceeds throf in any such stks, funds, or secs as are thrin mentd; And whas on the —— day of —— the sd B., at the request of the sd A., sold the sd —— Stk for the sum of £——, & invested such sum in the pchase of bonds of

Recitals.

Marriage settlement.

Investment.

Breach of trust.

(*a*) As to the right of the trustee to indemnity from the beneficiary in such a case, see T. Act, 1925, s. 62. As to the effect of a covenant of indemnity where the trustee is himself a beneficiary, see *Evans* v. *Benyon*, 37 Ch. D. 329.

Right of trustee to indemnity.

Where there are two trustees, and the active trustee makes an unauthorised investment, the passive trustee is not entitled to indemnity from him in the absence of special circumstances, as, for example, where the active trustee has obtained personal benefit from the breach of trust or is a solicitor: *Bahin* v. *Hughes*, 31 Ch. D. 390; *Re Linsley*, [1904] 2 Ch. 785.

As to the power of the Court to relieve a trustee who has acted honestly and reasonably, see T. Act, 1925, s. 61; *Re Turner*, [1897] 1 Ch. 536; *Perrins* v. *Bellamy*, [1899] 1 Ch. 797; *Re Lord De Clifford*, [1900] 2 Ch. 707; *Chapman* v. *Browne*, [1902] 1 Ch. 785; *National Trustees, &c., Ltd.* v. *General Finance, &c., Ltd.*, [1905] A. C. 373; *Re Mackay*, [1911] 1 Ch. 300; *Palmer* v. *Emerson*, *ib.* 758; *Re Greenwood*, 105 L. T. 509; *Re Allsop*, [1914] 1 Ch. 1.

As to the general right of a trustee to indemnity from a *cestui que trust* at whose request the trust was accepted, in respect of loss accruing in the due execution of the trust, see *Matthews* v. *Ruggles-Brise*, [1911] 1 Ch. 194, and cases there cited.

As to the right of the Public Trustee to indemnity out of the Consolidated Fund, see P. T. Act, 1906, s. 7.

the Governmt of ——; And whas it is apprehended that such sale & investmt were not authorised by the sd settlemt, & were breaches of trust; And whas the sd A. has agrd to execute & give to the sd B. such covt of indemnity in respt of such sale & investmt as is hrinar contained: *Recite title of A. to* "the ppty mentd in the schdle hto" *subjt to certain prior charges;* And whas the sd A. has agrd to give the sd B. such charge upon the sd ppty for the ppose of further securg such indemnity as afsd, as is hrinar contained: NOW THIS DEED WITNESSETH, that in conson of the premes the sd A. hby covts with the sd B., at all times hrafter to indemnify & keep indemnified the sd B., & his repves, from all actions, proceedings, claims, & demands, costs, damages, & expses on account of the sd sale of the sd —— Stk, or the sd investmt in bonds of the Governmt of ——, or of retaing the sd investmt until the sd A. or some other pson claiming under the sd settlemt shl require the sd B. or other the trees or tree for the time being of the sd settlemt to sell the same, or orwise in respt of the premes; And the sd A. hby charges All the ppty mentd & described in the schdle hto, & all the este & intt of him the sd A. in the same ppty & premes, & the rents, profits, & income throf [subjt to the incumbces hrinbfe mentd], with the indemnity of the sd B., & his repves, psuant to the covt in that behalf hrinbfe contd in respt of the matters referred to in or within the scope of such covt. In witness, &c.

Agreement.

Witnesseth.

Covenant to indemnify.

Charge.

The Schdle above referred to.

VII.

DEED of Covenant *by* Limited Company *to* Indemnify *their* Managing Director *in respect of* Guarantees *given by him to the* Company's Bankers *for* Advances (*a*).

Parties, A. & Co., Ltd. ("hrinar called the Co."), 1; B., director, 2: Whas the sd B., at the request of the Board of

Recitals.

Advances.

(*a*) For form of guarantee, see *ante*, p. 56, Prec. XIII. As to securities by a company to indemnify the directors in respect of guarantees, see *Re Pyle Works* (No. 2), [1891] 1 Ch. 173; *Seligman* v. *Prince & Co.*, [1895] 2 Ch. 617, and see *Re Law Car, &c., Corpn.*, [1912] 1 Ch. 405; *Re Gregory*

Directors of the Co. (of wch he is managing director), has signed or given, & may hrafter from time to time sign or give his promissory note or notes, or some other instrumt or instrumts to or in favour of Messrs. C. & Co (the bankers of the Co) by way of guarantee or collateral secy for advances made, or to be from time to time made by the sd bank to or on account of the Co, or for or in respt of other pecuniary accommodon to be from time to time afforded by the sd bank to the Co; AND WHAS the Co at the request of the sd B., & as an inducemt to him to undertake such psonal responsibility on behalf of the Co as afsd, have agrd to execute & give to him such indemnity in respt of the liability so assumed & to be assumed by him as afsd on behalf of the Co as hrinar appearg: NOW THIS DEED WITNESSETH as follows :—

Agreement.

Covenant to pay.

1. IN CONSON of the premes the Co hby covt with the sd B. that the Co will on demand repay & make good to the sd B., all & every the sum & sums of moy wch he shl at any time or times hrafter pay to the sd bank, or any pson or psons whomsr by reason or in respt of any promissory note or notes, guarantee or guarantees, or other instrumt or instrumts already signed or given, or to be hrafter from time to time signed or given by the sd B. to or in favour of the sd bank, on account of advances made, or to be made, or bills discounted or to be discounted by them to or on account, or for the accommodon of the Co, or any other pecuniary accommodon wch may be afforded by them to the Co, & will at all times hrafter keep the sd B. fully indemnified against all actions, proceedings, claims, demands, costs, &

Covenant to indemnify

Love & Co., [1916] 1 Ch. 203. A principal creditor is not entitled to the benefit of a security given by the principal debtor to a surety: *Re Walker*, [1892] 1 Ch. 621.

As to the assignability of a contract for indemnity, see *British Union, &c., Co.* v. *Rawson*, [1916] 2 Ch. 476.

Although the guarantee already given may have resulted in a debt presently payable from the managing director as surety to the bank: see *ante*, p. 57, note (*d*); there is no debt due from the company as principal debtor, and no right at law in the surety against the company under the guarantee until the surety has made some payment under the guarantee: *Re Mitchell*, [1913] 1 Ch. 201; *Re Beavan*, [1913] 2 Ch. 595. The right of the surety under the guarantee is an equitable right of indemnity against the principal debtor, that is to say, a right so soon as the amount guaranteed has become payable, to call upon the principal debtor to pay it in order that the surety may not be obliged to do so, and a right, if the surety pays, to be repaid: *Ascherson* v. *Tredegar Dry Dock, &c., Co.*, [1909] 2 Ch. 401; *Morrison* v. *Barking Chemicals Co.*, [1919] 2 Ch. 325.

expses, by reason or in respt of any such promissory note or notes, guarantee or guarantees, or other instrumt or instrumts to be signed or given by him as afsd.

2. The obligations of the Co under the foregoing covt shl continue to be bindg upon the Co notwithstdg any change in the ptners or members of the sd banking firm, & shl not be discharged by reason of the cesson at any time of the guarantees given by the sd A. as afsd, but shl continue in force or revive in the event of any subseqt renewal throf.

3. This deed shl not in anywise preclude the sd B. from enforcg or havg recourse to all or any other remedies to wch he may be or become entitled as such surety or guarantor as afsd.

In witness, &c.

VIII.

DEED *of* Indemnity, *by* One *of* Two Co-Plaintiffs, *by way of* Covenant *and* Charge, *against using* Name *of the other as* Co-Plaintiff (*b*).

Recitals. *Parties*, A., 1; B., 2: Whas the sd A., on or about the —— day of ——, instituted an action in the —— Division of the High Court of Justice intituled A. *v.* C., 19—, A. No. ——, whrin A. & B. were pltfs, & C. was deft, & thereby claimed specific pformce of a contract for the sale by the pltfs to the dft of certain ppty, known as the —— Este; And whas the name of the sd B. as such co-pltf was used witht any express authority from him, but he is willg that his name shd be continued as such co-pltf in the sd action, on his being indemnified against all consequential costs: And whas the sd A. is the este owner in respt of the fee simple of the sd —— Este & subjt to the sd contract for sale is entitled to the proceeds of the sale throf, absolutely: NOW THIS DEED WITNESSETH that in conson of the premes the sd A. hby covts

Action commenced.

Use of B.'s name.

Title to property.

Witnesseth.

(*b*) As a general rule an indemnity against the costs of any action which may be brought against the person indemnified in respect of work contracted to be done on his behalf extends only to party and party costs: *Maxwell* v. *British, &c., Co.*, [1904] 2 K. B. 342.

Indemnity against costs of action.

with the sd B., at all times hrafter to indemnify & keep indemnified the sd B. agnst all costs, damages, & expses to be incurred in consequence of the sd action, or anything in anywise relatg thereto ; And the sd A. hby charges the sd este, & the proceeds of the sale throf, with the paymt to the sd B. of all such costs, damages, & expses as afsd. In witness, &c.

Covenant of indemnity.

Charge of property.

LEASES (HOUSES), &c. (*a*).

INTERPRETATION CLAUSE (*b*).

Parties.

THIS LEASE, made, &c., betn A., of, &c. (hrinar called the lessor, wch expression, where the context so admits, shl include

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(*a*) The forms under this head are for ordinary occupation and building leases and leases for business purposes. For agricultural and mining leases, see *infra* ; and for variations for leases under powers and other special cases, see *post*, pp. 1003 *et seq.* As to stamps, see Stamp Act, 1891, First Sched., tit. Lease, as amended by the Fin. (1909–10) Act, 1910, s. 75, and the Rev. Act, 1911, s. 15. As to the stamps on leases of chattels, see *post*, p. 859, note (*a*).

Stamps.

(*b*) In accordance with the now very common practice the plan is adopted throughout the following forms of leases and agreements for leases of using the words "lessor" and "lessee," or "landlord" and "tenant," in place of the names of the parties, the former expressions being more commonly used in leases (though they are open to some objection on account of the risk of clerical errors which the similarity of the words involves), the latter in agreements for leases. These expressions may be made to include the reversioner and the termor for the time being respectively by an interpretation clause placed at the beginning or end of the instrument so as to enable all reference to the successors in title of either party to be omitted throughout. The provisions of ss. 78 and 79 of the L. P. Act, 1925, enable the formal part of any covenant contained in the deed to be framed without the assistance of an interpretation clause; but such a clause may still be required in order that the terms of the covenant may bear their proper construction.

As to use of words "lessor" and "lessee," &c., and interpretation clause.

By the L. P. Act, 1925, s. 141 (re-enacting and amending the substance of part of 32 Hen. 8, c. 34; C. Act, 1881, s. 10, and C. Act, 1911, s. 2), the benefit of the rent and lessee's covenants and conditions in a lease made *before or* after 1925 (which must be in writing, see *Blane* v. *Francis*, [1917] 1 K. B. 252; *Rye* v. *Purcell*, [1926] 1 K. B. 446, though the terms need not be expressly set out in the written agreement but may be implied from the language of the parties as construed by the surrounding circumstances, see *Cole* v. *Kelly*, [1920] 2 K. B. 106) is annexed to and to go with the reversion expectant on the term (notwithstanding severance of the reversion), and may be taken advantage of by the person from time to time entitled to the rents and profits of the land (as to whom see *Sunderland Orphan Asylum* v. *River Wear Commrs.*, [1912] 1 Ch. 191), although such person became entitled after the condition of

Benefit of lessee's and obligation of lessor's covenants annexed to reversion.

the este owner or este owners for the time being of the reversion of the premes hby demised expectant on the term hby grted where the context so admits) of the one pt, & C., of, &c. (hrinar called the lessee, wch expression shall include his exs, ads, and assns, where the context so admits) of the other pt.

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re-entry or forfeiture had become enforceable, provided that there had been no previous waiver or release; see *Davenport* v. *Smith*, [1921] 2 Ch. 270; *Atkin* v. *Rose*, [1923] 1 Ch. 522. But the old law still applies in cases of any severance of the reversionary estate or any acquisition of the right to receive or enforce any rent covenant or provision, effected before 1926. By s. 142 of the L. P. Act, 1925 (re-enacting and amending part of 32 Hen. 8, c. 34, and C. Act, 1881, s. 11), the obligation of the lessor's covenants, so far as he has power to bind the reversion is annexed to and goes with the reversion, notwithstanding severance thereof; and may be enforced by the person in whom the term is from time to time vested. This section applies to leases made before or after 1925, whether the severance of the reversion was effected before or after that year, but where the lease was made before 1882 the law in force before the last-mentioned year still applies; see *Barnes* v. *City of London, &c., Co.*, [1918] 2 Ch. 18. As to the previous law see the notes to *Spencer's Case*, 1 Smith's L. C. 62 *et seq.* See also the general enactment in the L. P. Act, 1925, s. 78 and s. 79, as to covenants made after 1925, making the benefit and burden of covenants relating to any land run with the land although the successors in title of, and the persons deriving title under, the covenantee or covenantor or such successors are not expressed, where it would so run if those words were expressed; it should be noted also, that in connection with covenants restrictive of the user of land, "successors in title" include the owners and occupiers for the time being of the land. As to covenants made before 1925, the law is not altered; and see *ante*, pp. 2, 354, 710.

The effect of these enactments appears to be in all cases, whether the lease is granted by an owner or under a power, to carry the benefit and burden of the lessor's and lessee's covenants to the reversioner and lessee respectively for the time being, as the case may be, irrespective of the form of the covenants, and to prevent technical objections arising in future in this respect: *Davis* v. *Town Properties Investment Corpn.*, [1903] 1 Ch. at p. 805. Apart from the L. P. Act, 1925, the burden of the lessee's covenants devolves by the common law upon his representatives: 49 Sol. J. 836; but not on his executor *de son tort*: *Stratford-upon-Avon Corporn.* v. *Parker*, [1914] 2 K. B. 562. Express covenants by a lessee which are purely collateral, that is to say which do not touch or concern the thing demised, do not bind his assigns even if named in the covenant. After 1925 covenants to do some act relating to the land notwithstanding that the subject matter may not be in existence when the covenant is made, unless a contrary intention is expressed, will run with the land and bind the assigns even if not named: L. P. Act, 1925, s. 79; as to the earlier law, see Elph. Introd., 7th ed., 311; see also notes to *Spencer's Case*, 1 Smith's L. C. 62 *et seq.* The representatives or successors of either covenantor or covenantee should not now be mentioned in the formal part of a covenant: the L. P. Act, 1925, ss. 78, 79 (see preliminary note, "Covenants," p. 710).

Under-lessee.

An act of an underlessee in contravention of his lessor's covenant will not in all cases constitute a breach of that covenant, see *post*, p. 808.

CONSIDERATION.

Rent and covenants

1. In conson of the rents & covts, on the pt of the lessee, hrinar reserved & contained.

Premium (*z*) and rent, &c.

2. In conson of the sum of £—— now pd by the lessee to the lessor (the receipt whrof is hby acknowed) & of the rents & covts, &c.

Surrender of former lease, &c.

3. In conson of the surr of a former lease of the premes hby demised, dated, &c., & made betn, &c. (*a*), & of the rents & covts, &c.

PARCELS (*b*).

House in town (*c*).

1. All that messe or tenemt situate & known as No. —— in —— Street, in the parish of ——, in the county of ——, togr with the yard, garden, & outbldgs thereto belonging, now or late in the occupon of ——.

House, &c., referring to plan.

2. All that piece of ground, situate, &c., with the messe or tenemt & bldgs erected on pt throf, wch premes are shown on the plan drawn in the margin of these psnts & thron coloured ——.

House or offices with fixtures, &c.

3. All that messe, &c., *or*, " all those three rooms or offices nod, &c., on the —— floor of the bldg," No. ——, in —— Street, &c., togr with the fixtures & fittgs specified in the

Variation for property in mortgage.

The above is a form of interpretation clause when placed at the commencement of the instrument, which is the better plan, though it may be placed at the end. The above forms defining " lessor " are not adapted to a lease by mortgagor and mortgagee, or by a mortgagor under a power in the mortgage or the L. P. Act, 1925, s. 99. In this case a special form of interpretation clause must be used: see *post*, p. 1011.

For other forms of commencement adapted to various special cases, see *post*, pp. 1003 *et seq.*

The following forms for leases of " Houses, &c.," and " Agricultural " are mostly for one lessor and one lessee. The alterations required in the case of a lease to several are noticed *post*, pp. 1003 *et seq.*

(*z*) Where a premium is taken the statement as to value, *post*, p. 829, should be inserted if appropriate: see *post*, p. 834, note.

(*a*) As to surrender of a lease by the acceptance of a new lease, see *post*, p. 1025, note. See also the L. P. Act, 1925, s. 52 and s. 150, re-enacting s. 6 of theLandlord and Tenant Act, 1730.

(*b*) See also the forms of parcels, *ante*, pp. 480 *et seq.*; and as to general words, see *ante*, p. 497.

It may sometimes be proper to except the sites of adjoining roads.

(*c*) As to whether, under special circumstances, this includes the soil of the road *usque ad medium filum*, see *Mappin* v. *Liberty & Co.*, [1903] 1 Ch. 118; and *ante*, p. 482, note (*b*).

schdle hto, & all other (if any) fixtures & fittgs belonging to the lessor in or upon the premes.

Land referring to plan (*a*).

4. ALL THAT piece of land situate at, &c., on the —— side of the road leadg from, &c., & wch, as to its position, dimensions & boundaries, is parlarly shown in the plan drawn on the margin of these psnts, & thron coloured ——.

Land and buildings with dimensions in feet.

5. ALL THAT piece of ground situate & being on the north side of —— Street, in the parish of ——, in the county of ——, containg in breadth as well on the south side or front throf next —— Street afsd as on the north side or rear throf —— feet, & in length as well on the west as on the east side throf —— feet, be the same sevl dimensions little more or less, & wch sd piece of ground is bounded on the south by the sd street, on the north by land of, &c., &c.: Togr with the messes & bldgs erected on the sd piece of ground, *or*, "togr with the messe or tenemt & other bldgs now built or in course of bldg or wch shl or may during the term hby grted be erected or built on the sd piece of ground or any pt throf."

House with use of public garden (*b*).

6. ALL THAT messe, &c., togr with the use in common with the other tenants of the lessor, *or*, "in common with the other psons entitled thereto," & under reasble regulons & restrictions imposed *or* "to be imposed" by the lessor, of the ornamental garden in front of the sd messe & premes hby demised.

Right of way.

7. TOGR WITH the right in common with the lessor, & the tenants or occupiers of the adjoing premes on the east side of the sd premes, *or*, "in common with the other psons havg the like right" to the use of the roadway or passage on the east side of the sd premes leadg from the public road or street called —— Street, to, &c., the lessee from time to time contributg a due proportion [accordg to the extent of his frontage], *or*, "an eql —— pt," of the expses of repairg & maintaing the sd roadway or passage.

The same.

Another form.

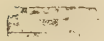
8. TOGR WITH the exclusive use & enjoymt for the lessee of the sd way or passage of the width of —— feet leadg from the yd or back pt of the sd demised premes into —— street afsd.

(*a*) As to the use of a plan, see *ante*, p. 483.

(*b*) As to the garden, see the Town Gardens Protection Act, 1863. See also *Keith* v. *Twentieth Century Club*, 73 L. J. Ch. 545, and 61 Sol. J. 541.

The same. Another form.

9. Togr with the free right of passage at all times & for all pposes to & from the sd demised premes over the sd road or way leadg from —— to —— & over all other neighbourg roads or ways belonging to the lessor.



Right of drainage.

10. Togr with the free right of passage & runng of water & soil from the sd demised premes through the sewer or drain runng under the sd road, &c. [all sewers, drains, & watercourses now or hrafter made or passg under or along any of the sd roads].

Right of light and air (*c*).

11. Togr with the right to the free & uninterrupted access of light & air to the windows & openings now existg in the sd demised premes from over the houses & land of the lessor, situate on the east side throf.

RESERVATIONS (*d*).

Right of drainage (*e*).

1. Except & reservg unto the lessor (*f*) the free & uninterrupted passage & runng of water & soil [*In the lease of part of a house say* " gas & electricity from and to the other pts of the sd house," *and after* " watercourses " *say* " gas pipes & meters, electric wires & meters, & speaking tubes "], from and to the other bldgs & land of the lessor (*f*), & his tenants, adjoing or near to the sd premes hby demised, through the sewers, drains, & watercourses, wch are now or may hrafter durg the term hby grted be in or under the sd demised premes.

As to reservations.

(*c*) See *ante*, p. 59, note.

(*d*) See Elph. Introd., 7th ed., 323, and *ante*, pp. 492 *et seq.* As to reservations of easements, see *Lord Dynevor* v. *Tennant*, 13 App. Cas. 279. The reservation of a power to the lessor to enter and execute works under the Public Health Acts, or other like Acts, may sometimes be desirable: see *Parker* v. *Inge*, 17 Q. B. D. 584. As to the necessity for sometimes reserving rights required for use with adjoining property, see *Rigby* v. *Bennett*, 21 Ch. D. 559 (building land, digging foundations); *Spicer* v. *Martin*, 14 App. Cas. 12 (right of lessee to interfere with management of other property as to terms of letting); *Union Lighterage Co.* v. *London, &c., Co.*, [1902] 2 Ch. 557; *Ray* v. *Hazeldine*, [1904] 2 Ch. 17.

(*e*) As to the extent of this reservation, see *Chadwick* v. *Marsden*, L. R. 2 Ex. 285.

(*f*) In an underlease, say, " lessor & the superior landlord of the sd premes."

2. Except & reservg unto the lessor (*b*) the use at all times, & for all pposes in common with the lessee, of the passage of the width of —— feet leadg from, &c. to &c. Right of way (*a*).

3. Except & reservg unto the lessor all timber & timber-like trees now standg or growg or hrafter to be standg or growg upon the sd demised land or any pt throf, & all mines, minerals, & quarries, in, upon, or under the same, but witht power for the lessor to cut down or remove any such timber or trees, or to dig for or work such mines, minerals, or quarries except with the consent in writg of the lessee [*or*, "with full power for the lessor to enter upon the sd demised premes, & to cut, dig, search for, work, quarry, & carry away the same, but not so as to interfere with the bldgs standg thron, or to occasion any unnecy damage to the lessee, & so that the lessee shl be fully compensated for all damage thereby occasd"]. Timber and minerals (*c*).

4. Subjt to all rights & easemts or reputed easemts belongg to or usually enjoyed with any adjacent ppty. General rights (*d*).

5. Subjt to the right wch is hby reserved to the lessor of support to his adjacent bldgs on the —— side of the premes hby demised as at psnt enjoyed from the demised premes. Support.

6. Subjt to the right wch is hby reserved to the lessor & his tenants at any time hrafter to rebuild or alter any of the adjoing (*e*) or neighbourg bldgs accordg to such plans (whether as to height, extent, or orwise), & in such mner as shl be approved by the lessor's surveyor, notwithstdg any interference thereby occasd to the access of light or air to the premes hby demised. Right to rebuild or alter adjacent buildings.

(*a*) For other forms of reservations of rights of way, see *ante*, p. 497. A lessor, who reserves a passage for himself exclusively, is not bound to use the passage only as a passage and in the condition in which it was at the date of the lease: *Phelps* v. *City of London Corporn.*, [1916] 2 Ch. 255.

(*b*) See note (*f*) previous page.

(*c*) As to what is included in a reservation of minerals, see *Tucker* v. *Linger*, 8 App. Cas. 508. Under the S. L. Act, 1925, s. 50, a lease may be granted of the surface only reserving the mines and minerals: cf. *Re Duke of Rutland's S.E.*, [1900] 2 Ch. 206; *Re Gladstone*, *ib.* 101.

(*d*) As to the circumstances under which a reservation to the lessor of an easement or right necessary to support a previous lease or grant of adjoining property to another person may be implied, see *Thomas* v. *Owen*, 20 Q. B. D. 225; *Brown* v. *Alabaster*, 37 Ch. D. 499; *Westwood* v. *Heywood*, [1921] 2 Ch. 130; see also *Milner's Safe Co., Ltd.* v. *G. N. & City Rly. Co.*, [1907] 1 Ch. 208; *Hansford* v. *Jago*, [1921] 1 Ch. 322. Reservation of easement.

(*e*) As to the meaning of adjoining, see *post*, p. 805, note (*d*).

HABENDUM.

Ordinary form

1. To HOLD the premes hby demised unto the lessee from the —— day of ——, —— (*f*), *or*, " from the day of the date of these psnts," *or*, " from the —— day of —— now last past," for the term of —— yrs [subjt to the sub-tenancies mentd in the schdle hto] *or*, " from yr to yr," *for an underlease say* " for the residue of the sd term of —— yrs, except the last —— days throf " (*g*).

Partnership premises.

2. To HOLD the premes hby demised unto the lessees upon the trusts hrinar declared, from, &c.

REDDENDUM.

Reservation of rent (*h*).

1. PAYING THEREFOR yrly durg the sd term hby grted, *or*, " the sd tenancy " (*i*), [unto the lessor (*k*)], the rent of £—— to be

(*f*) If no date is mentioned the lease will take effect from the date of delivery and not from the day of date of the lease: Norton on Deeds, 173. A tenancy stated to commence " on " a particular day, commences on that day: *Sidebotham* v. *Holland*, [1895], 1 Q. B. 378. But a tenancy " from " a particular day commences on the day following: *Ackland* v. *Lutley*, 9 Ad. & E. 879; *Meggeson* v. *Groves*, [1917] 1 Ch. 158; and see *Raikes* v. *Ogle*, [1921] 1 K. B. 576. As to a lease for an uncertain period, see *G. N. R. Co.* v. *Arnold*, 33 T. L. R. 114.

(*g*) An underlease for the whole term amounts to an assignment: *Beardman* v. *Wilson*, L. R. 4 C. P. 57.

Distress.

(*h*) As to the power to distrain for rent, see *post*, p. 821, note (*c*).

(*i*) The words " & so in proportion for any less time than a yr," or " And also paying in the event of the sd term being determined betn two of the sd qtrly [half-yrly] days by re-entry [or notice] under the proviso [respective provisoes] in that behalf hrinar contained, a proportionate pt of the sd rent for the fraction of the current qtr [half-yr] forthwith on such determon," are usually inserted, but are unnecessary: see Apportionment Act, 1870, ss. 2 and 3. As to the apportionment of the liability to the rent where the lease is assigned between two rent-days, see *Swansea Bank* v. *Thomas*, 4 Ex. D. 94; *Re Johnson*, 70 L. T. 381; *Glass* v. *Patterson*, [1902] 2 Ir. R. 660.

Reservation of rent.

Effect of L. P. Act, 1925.

(*k*) It is sufficient to reserve the rent generally without specifying to whom. This was so before the C. Act, 1881 (see Elph. Introd., 7th ed., 327), and by s. 10 of that Act, now re-enacted by L. P. Act, 1925, s. 141, the rent reserved by a lease is in all cases expressly annexed to the reversion, see *ante*, p. 778, note. As to the case where the reversion is in mortgage, see C. P. Act 1925, s. 98 (1), replacing Judicature Act, 1873, s. 25 (5), and *post*. The words in brackets may therefore be omitted, and in the case of a lease under a power it is better to do so.

pd (*a*) witht any deduction (*b*) except for [land tax (*c*) &] landlord's ppty tax (*c*) by eql qtrly [half-yrly] paymts on the —— day of ——, &c., *or*, "on the four usual qtr days," in every yr, the first of such paymts to be made on the —— day of —— next (*d*), [& the last paymt to be made in advance one calr month bfe the expiron of the sd tenancy or immedly on the determinon throf in the event of the same being determined by re-entry under the proviso in that behalf hrinar contained].

(*a*) If several rents are reserved, say, "all wch rents or sums hrinbfe reserved or made payable as rent shl be pd."

(*b*) "Without any deduction;" see *Home & Colonial Stores* v. *Todd*, 63 L. T. 829.

As to land tax, landlord's property tax and tithe.

(*c*) The tenant may contract to pay land tax, but if he pays in the absence of such a contract he may deduct it from his rent in the current year, but not afterwards: *Andrew* v. *Hancock*, 1 Brod. & B. 37. As to the effect of a covenant by the lessor to pay land tax, see *post*, p. 811. The lessor is bound to pay landlord's property tax: see Income Tax Act, 1918, Sched. (A), No. VII., rr. 1 and 2, and *Lamb* v. *Brewster*, 4 Q. B. D. 607; *Duke of Northumberland* v. *I. R. Commrs.*, [1920] A. C., at p. 833. The effect of Sched. (A), No. VIII., rr. 1 and 2 of the Act, is to treat the payment by a tenant of landlord's property tax as payment *pro tanto* of rent in advance: see *Re Sturmey Moters, Ltd.*, [1913] 1 Ch. 16; *Re Hayman, &c., Ltd.* (No. 2), [1917] 1 Ch. 545; *Drughorn* v. *Moore*, [1924] A. C. 53; and a tenant paying the tax is entitled to deduct the amount paid from his next payment of rent, although, if he omits to do so, he cannot deduct it subsequently, except if a deduction is made before the Act imposing the rate of duty is in force and less than the proper amount is deducted when the balance may be deducted from the first payment of rent after the passing of the Act: *Hill* v. *Kirshenstein*, [1920] 3 K. B. 556. But if the rent is unpaid for more than one year, the deduction is not confined to the current financial year: *Kirk* v. *Cunningham*, [1921] 3 K. B. 637. As to the recovery of sums made irrecoverable by The Increase of Rent Act, &c., 1920, see p. 843, *post*. The tenant is not bound to produce to the landlord the collector's receipt for payment of the tax. *North London, &c., Co.* v. *Moy*, [1918] 2 K. B. 439. A provision that the tenant may deduct the tithe rent-charge is now generally unnecessary, see *post*, p. 922, note (*f*). A tithe rate assessed on houses in the City of London is not a tithe rent-charge: *Re Salter & Awdry*, [1921] 2 Ch. 141.

As to rent already paid.

(*d*) If the lease is not executed till after its commencement and some rent has already become due and been paid, say, "the first of such paymts after the date of these psnts in respt of the now current half yr [qtr] to be made on the —— day of —— next," or add: "Provd that the rent already pd by the lessee in respt of his occupon of the premes since the —— day of —— shl be in satisfon as far as the same extends of the rent already accrued due under this demise."

Rent payable in advance (*e*).

2. PAYING, &c., *as in* f. **1**, the rent of £—— to be pd in advance witht any deduction (except, &c.), by four eql qtrly paymts, the first of such paymts for the qtr endg on the —— day of —— next to be made on the execution of these psnts, & the subseqt paymts to be made in advance for each qtr on the —— day of ——, &c.

Varying rent (*f*).

3. PAYING, &c., the respective rents followg, that is to say, durg the first & second yrs of the sd term the yrly rent of £——, & durg [the next —— yrs of the sd term the yrly rent of £—— & durg] every subseqt yr of the sd term the yrly rent of £——, such respective rents to be pd witht any deduction (except, &c.) by eql qtrly [half-yrly] paymts, &c.

Peppercorn rent.

4. PAYING, &c., durg the first —— yrs of the sd term the rent of a peppercorn if demanded, & durg the residue of the sd term the yrly rent of £——, such last-mentd rent to be pd witht any deduction (except, &c.) by eql qtrly [half-yrly] paymts, on, &c., & the first paymt throf to be made on, &c.

Separate rent for each house in lease of several houses.

5. PAYING, &c., the rent of £—— for each of the sd six messes hby demised, makg an aggregate yrly rent of £—— for all the sd messes & premes, to be pd, &c.

Insurance rent (*g*).

6. AND ALSO paying by way of further or addonal rent from time to time a sum or sums of moy eql to the amt wch the lessor may expend in effectg or maintaing the insce of the sd premes against loss or damage by fire [or accident] as hrinar

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(*e*) As rent may legally be paid on a Sunday it becomes in arrear on the following Monday, if not paid on the day on which it is lawfully due: *Child* v. *Edwards*, [1909] 2 K. B. 753. The landlord may distrain for rent payable in advance, as soon as it becomes due: *London, &c., Loan, &c., Co.* v. *L. & N. W. Rly. Co.*, [1893] 2 Q. B. 49. As to the rule where a trustee in bankruptcy remains in possession, see the Bankruptcy Act, 1914, s. 35, and see *Re Binns*, 1 Ch. D. 285; and where the tenant is a company in liquidation, see *Shackell* v. *Chorlton*, [1895] 1 Ch. 378; *Venner's Electrical, &c., Appliances, Ltd.* v. *Thorpe*, [1915] 2 Ch. 404. Rent payable in advance is not apportionable: *Ellis* v. *Rowbotham*, [1900] 1 Q. B. 740.

As to varying rent in lease under power.

(*f*) Where the lease is of settled land under a power (express or statutory) requiring the best rent to be reserved, an increasing rent cannot be reserved unless expressly authorised (*Re Hallett to Martin*, 24 Ch. D. 624), the objection being that if the next remainderman is a tenant for life, this might operate to his prejudice; and *à fortiori* a diminishing or fluctuating rent would be bad. In the case of building leases a peppercorn rent, or other rent less than the full rent, may be reserved during the first five years or any part thereof, under the S. L. Act, 1925, s. 44 (2).

(*g*) This is probably effectual as a means of obtaining the right of distress, as it seems not to be affected by the Bills of Sale Acts.

mentd ; such last-mentd rent to be pd witht any deduction on the qtrly [half-yrly] day for paymt of the rent next ensuing after the expenditure throf.

Improvement rent.

7. And also payg by way of addonal rent such sum as shl be eql to £5 p.c. p.a. upon all moys wch the lessor may from time to time expend, or may repay to any local or public authority in or towards or in connection with the execution of works of any description in or connected with the demised premes or any additions thereto or any streets or passages adjoing or coextensive therewith or sewers or drains thrunder, such last-mentd rent to commence & be payable from the qtrly [half-yrly] day for paymt of rent wch shl happen next after any moys or expses shl be so expended or repaid, & to continue durg the residue of the sd term.

Penal rent on breach of covenant (*a*).

8. And also if & so often as the lessee shl, contrary to his covts in that behalf hrinar contained, *here specify breaches of covt to be guarded against*, then & in any & every such case paying durg the then residue of the term hby grted as a further rent the yrly sum of £——, every such addonal rent to commence from the day on wch the breach of covt in respt whrof the same is payable as afsd shl happen, & to be payable thenceforth qtrly [half-yrly] witht deduction in the same mner as the sd origl rent of £——.

Penal rent in respect of any breach of covenant.

9. And also as a further rent the sum of £—— in any & every *week* in wch the lessee shl break or fail to pform or observe any of the covts & condons hrinar contained & on his

(*a*) It used to be considered that on payment of the increased rent the lessee was at liberty to do the act on which it became payable, so as to prevent the landlord from entering for breach of covenant ; but where, as in the text, the acts in question are treated in the reddendum as breaches of covenant, it is now decided that the effect is to give alternative remedies to the lessor either by ejectment for breach of covenant, or injunction or recovery of the penal rent : *Weston* v. *Metropolitan Asylums District*, 9 Q. B. D. 404 ; and see Norton on Deeds, 503. It may be safer to reserve a separate rent in respect of the breach of each covenant, so as not to run the risk of the rent being considered as a penalty : see *Willson* v. *Love*, [1896] 1 Q. B. 626. Possibly the reservation of penal rents may become more common now that the lessor's power of re-entry for breach of covenant is further restricted by the L. P. Act, 1925, s. 146, extending the provisions of the C. Act, 1881, to breach of covenants against assigning, &c., committed after 1926 : see 26 Sol. J. 489. No additional stamp is required in respect of a penal rent : see Stamp Act, 1891, s. 77 (1). As to penal rents on agricultural holdings, see *post*, p. 921, note (*e*).

As to penal rents.

pt to be pformed or observed, such last-mentd rent to commence on the day on wch such breach, non-pformce, or non-observce shl first happen, & to continue payable until the lessee shl specifically pform or observe & pay full damages & compenson to the satisfon of the lessor for the breach, non-pformce or non-observce of any of such covts or condons, such last-mentd rent to be pd *weekly* witht any deduction.

LESSEE'S COVENANTS.

Commencement.

1. And the lessee hby covts with the lessor (*b*) in mner followg, that is to say :—

The same for several lessees (*c*).

2. And the lessees do hby [& as a separate covt each of them doth hby] covt with the lessor in mner followg, that is to say :—

To pay rent.

3. That the lessee will, durg the continuce of the term hby grted, pay the sd yrly rent [respective yrly & other rents or sums of moy] hrinbfe reserved & made payable at the times & in the mner at & in wch the same is [are resply] hrinbfe reserved & made payable witht any deduction (except as afsd).

(*b*) As to the statutory enactments making the benefit of the lessee's covenants run with the land, and as to the nature and wording of the covenant affecting the burden in this respect, see *ante*, p. 779, note. As to the frame of the covenants to be entered into by the executors of a person who agreed to take a lease, but died before completion, see *Stephens* v. *Hotham*, 1 K. & J. 571. The bankruptcy of a lessee following an assignment of the lease which constitutes the act of bankruptcy of the lessee, does not prevent the assignee from being liable for rent accrued due before the bankruptcy, *Stein* v. *Pope*, [1902] 1 K. B. 595. As to disclaimer of lease by the trustee, see *post*, p. 834. A covenant by a trustee imposes no liability on the *cestui-que-trust* who is in beneficial occupation of the demised premises : *Ramage* v. *Womack*, [1900] 1 Q. B. 116. A lease and the tenant's liabilities under it continue, though his personal occupation of the demised premises is rendered illegal or impossible by Act of State : *London & Northern Estates Co.* v. *Schlesinger*. [1916] 1 K. B. 20 ; *Whitehall Court, Ltd.* v. *Ettlinger*, [1920] 1 K. B. 680 ; and see *Halsey* v. *Lowenfeld*, [1916] 2 K. B. 707. But the tenant is not liable on covenants the performance of which is thereby rendered impossible : *Matthey* v. *Curling*, [1922] 2 A. C. 180.

(*c*) In a lease to several, it should be clearly expressed whether they are to be liable severally as well as jointly. Where a lease was assigned to tenants in common it was held that the lessor could recover full damages for breach of covenants from either tenant : *United Dairies, Ltd.* v. *Public Trustee*, [1923] 1 K. B. 469.

4. And also will (*d*) from time to time, & at all times durg the sd term, pay & discharge all rates, taxes, duties, charges, To pay rates, taxes, and outgoings (*e*).

(*d*) These are the appropriate words for connecting several covenants. Where the deed is paragraphed, consecutive covenants may with advantage be arranged in sub-paragraphs, as in Prec. IX., *post*, p. 862.

(*e*) See Elph. Introd., 7th ed., 329; 48 Sol, J. 172, 189, *ante*, p. 247. It is now settled that if a tenant for a term of years makes an agreement in clear and unambiguous terms that he will bear all outgoings (as to the comprehensive meaning of the words "duties" and "impositions" in this connection, see *Farlow* v. *Stevenson*, [1900] 1 Ch. 128; *Foulger* v. *Arding*, [1902] 1 K. B. 700; *Eastwood* v. *McNab*, [1914] 2 K. B. 361; and as to the narrower meaning of "assessments," see *Lumby* v. *Faupel*, 90 L. T. 140), he will have to pay all expenses which may reasonably be supposed to have been contemplated by the parties as being within the purview of the contract notwithstanding the shortness of the term: *Foulger* v. *Arding*, *sup.*; *Re Warriner*, [1903] 2 Ch. 367; *Stockdale* v. *Ascherberg*, [1904] 1 K. B. 447; *Greaves* v. *Whitmarsh*, [1906] 2 K. B. 340. Expenses incurred for drainage, paving, &c., under the Public Health or Metropolis Management Acts (see *Greaves* v. *Whitmarsh*, *sup.*) such as within everyday experience may be required at the instance of local authorities must be regarded as reasonably within the contemplation of the parties to such a contract, and are therefore included in the covenant in the text: *Smith* v. *Robinson*, [1893] 2 Q. B. 53; *Brett* v. *Rogers*, [1897] 1 Q. B. 525; *Wix* v. *Rutson*, [1899] 1 Q. B. 474; *Farlow* v. *Stevenson*, [1900] 1 Ch. 128; *Weld* v. *Clayton-le-Moors U. D. C.*, 86 L. T. 584; *Foulger* v. *Arding*, *sup.*; *George* v. *Coates*, 88 L. T. 48; *Re Warriner*, *sup.*; *Stockdale* v. *Ascherberg*, *sup.*; but where the landlord undertook to keep the exterior of the demised premises in repair, see *Howe* v. *Botwood*, [1913] 2 K. B. 387; *Henman* v. *Berliner*, [1918] 2 K. B. 236. There may however be some cases of exceptional expenditure for other purposes which cannot be regarded as being within the purview of the contract: *Mile End Old Town Vestry* v. *Whitby*, 78 L. T. 80 (a rate of a new kind); *Foulger* v. *Arding*, *sup.* Expenses under the Factory and Workshop Act, 1901, s. 14 (which repeals and replaces the Factory and Workshop Act, 1891, s. 7) and s. 101 (8), where the premises are used as a bakehouse, may be regarded as outgoings within the above covenant: *Arding* v. *Economic, &c., Co.*, 79 L. T. 622; *Horner* v. *Franklin*, [1904] 2 K. B. 877, but see *Stuckey* v. *Hooke*, [1906] 2 K. B. 20, 26. Such expenses, however, are apportioned between the landlord and tenant—not according to the terms of the contract between them, but as may appear to the statutory tribunal, *i.e.* the County Court in the first case, s. 14 (4), and a court of summary jurisdiction in the second, s. 101 (8), just and equitable in the circumstances of the case, of which the contractual relations between the parties form part only: *Monk* v. *Arnold*, [1902] 1 K. B. 761; *Horner* v. *Franklin*, [1905] 1 K. B. 479; *Stuckey* v. *Hooke*, [1906] 2 K. B. 20. But if the parties have contemplated a possible imposition of the kind, it is not just or equitable to relieve the tenant of his burden: *Monro* v. *Lord Burghclere*, [1918] 1 K. B. 291. As to drainage and paving charges. Factory or workshop.

The additional licence duties payable under the Fin. (1909–10) Act, 1910, are outgoings within the meaning of the covenant in the text: *Wauer* v. *Hoare & Co.*, 27 T. L. R. 16; but a proportionate part may be

assessmts, & outgoings whatsr (whether parliamentary, parochial, local, or of any other descripon) wch are now or may at any time hrafter be assessed, charged, or imposed upon or payable in respt of the sd demised premes, or the owner or occupier in respt throf, the [land tax (*a*) &] landlord's ppty tax (*a*) only excepted.

To pay rates and taxes.

5. And also will at all times durg the sd term pay all rates & taxes wch now are or may at any time hrafter be assessed or charged upon the demised premes or the occupier in respt throf the land tax (*a*) & landlord's ppty tax (*a*) alone excepted.

To pay costs of abating nuisance (*b*).

6. And also will from time to time during the sd term pay all costs, charges, & expses incurred by the lessor in abating a nuisance and executg all such works as may be necy for abatg a nuisance in obedience to a notice served by a local authority other than a nuisance arisg from the defective construction of any structural convenience now on the demised premes.

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recovered from the lessor: see *post*, p. 894. As to the liability of the lessor for compensation under the Licensing Consolidation Act, 1910, see *post*, p. 896, note (*a*).

The tenant is not bound to pay an outgoing charged before but payable after the commencement of the term: *Surtees* v. *Woodhouse*, [1903] 1 K. B. 396. As to when expenses for works executed by a local authority under the Public Health Act or the Private Street Works Act, 1892, become a charge on the property, see *ante*, p. 247, note.

The distinction taken in *Tidswell* v. *Whitworth*, L. R. 2 C. P. 326, between local charges imposed directly on the premises and those imposed on the owner is practically overruled: *Greaves* v. *Whitmarsh*, [1906] 2 K. B. 340. The question as to liability to pay water rates may depend on whether the assessment comprises land not in the lease: *Bourne* v. *Salmon & Gluckstein*, [1907] 1 Ch. 616. The question whether, in the absence of the covenant in the text, a tenant paying an assessment to a local authority, can deduct the amount from his rent, depends upon the language of the statute under which the assessment is made. Many of the cases are collected in *Skinner* v. *Hunt*, [1904] 2 K. B. 452. A lessor paying inhabited house duty, now abolished, but which was an assessment charged on the premises, could recover the amount paid from the lessee who was bound to pay under the covenant: *Eastwood* v. *McNab*, [1914] 2 K. B. 361.

As to tenancies from year to year, see *Valpy* v. *St. Leonard's Wharf Co.*, 1 L. G. R. 305, and compare the cases above cited. In the absence of express terms, the Court will not import into a yearly tenancy an agreement on the part of the tenant to pay expenses in respect of sanitary improvements equal to one year's rent: *Harris* v. *Hickman*, [1904] 1 K. B. 13.

(*a*) As to these taxes, see *ante*, p. 785, note (*c*).

(*b*) See Public Health Act, 1875, ss. 91 *et seq.*

7. And also will pay unto the lessor all costs, charges & expses (includg legal costs & fees payable to a surveyor) wch may be incurred by the lessor in or in contemplon of any proceedings under sections 146 and 147 of the L. P. Act, 1925. To pay lessor's costs of proceedings under L. P. Act, 1925 (*c*).

8. And also will [in the yr —— & thrafter] once in every three yrs of the sd term [& also during the last yr throf] (*d*) paint the outside wood & iron [& stucco or cement] work of the sd demised premes [& any addonal bldgs wch may at any time durg the sd term be erected thron, *or*, " & all additions thereto " (*e*)] with two coats of good oil & white-lead paint in a pper & workmanlike mner. To paint outside every three years.

9. And also will [in the yr —— & thrafter] once (*f*) in every seven yrs of the sd term [& also durg the last yr throf] paint all the inside wood & iron work usually painted of the sd demised premes [& any such addonal bldgs as afsd, *or*, " & all additions thereto " (*e*)] with three coats of good oil & white-lead paint in a pper & workmanlike mner (*g*). To paint inside every seven years (*f*).

(*c*) See *Skinners' Co.* v. *Knight*, [1891] 2 Q. B. 542 ; *Lock* v. *Pearce*, [1893] 2 Ch. 271. The L. P. Act, s. 146 (3), appears not to entitle the lessor to recover his costs of employing a solicitor or surveyor in case the lessee avoids the forfeiture by complying with the notice. It is by no means certain that assigns of the lessee are bound to perform this covenant.

(*d*) The following addition may occasionally be proper here :—" at the same time as & so as to correspond with the adjoing houses : " or " in such month as shl be from time to time appted by the lessor in that behalf ; " and the following may sometimes be added at the end of the covenant :—" & of a tint or colour to be approved by the lessor, & recolour in imitation of stone the outside stucco or cement work, & once in every seven yrs of the sd term clean & repoint the external stone & brickwork of the premes." Variations as to outside painting, &c.

A lessee cannot avoid his liability under a covenant to paint in a particular year by determining the tenancy during that year : *Kirklinton* v. *Wood*, [1917] 1 K. B. 332.

(*e*) As to the importance of the words in brackets, see *Cornish* v. *Cleife*, 3 H. & C. 446.

(*f*) See L. P. Act, 1925, s. 147, as to relief which may be given to a lessee against notice relating to internal decorative repairs.

(*g*) The following addition may sometimes be proper :—" & afterwards grain, marble & varnish the pts usually grained, marbled, & varnished, & also wash, distemper, & whiten all ceilgs, & colour all walls, & re-paper the rooms & staircase, & size & varnish the staircase paper in the usual mner." Addition to covenant to paint.

To paint inside and out when required.

10. And also will paint with two coats of good oil colour all the inside & outside wood & iron work of the sd premes [& all additions thereto (*a*)] as often as the same shl be required.

Short form. To keep in repair, with variations (*b*).

11. And also will from time to time, & at all times durg the sd term, well & substantially repair, cleanse, maintain,

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(*a*) See note (*e*) on previous page.

(*b*) This is a continuing covenant, and imposes an obligation to rebuild in case of destruction by fire: *Jacob* v. *Down*, [1900] 2 Ch. 156; or by the king's enemies: *Redmond* v. *Dainton* [1920] 2 K. B. 256. The lessee is not liable for a breach of this covenant if he is prevented from performing it owing to the requirements of the Local Authority: *Wright* v. *Lawson*, [1903] W. N. 108. The following addition may sometimes be desirable :—

Qualifications of covenant to repair.

"And also will, when & so often as any fixtures belonging to the premes shl so require, substitute other fixtures of a similar descripon & value to the satisfon of the surveyor of the lessor." The covenant may sometimes require to be qualified by adding :—"except substantial repairs to the main walls, roof, foundations, & main drains," or, "except such repairs as are hby agrd to be executed by the lessor," or, "except in case of destruction or damage by fire," or, "except repairs rendered necessary through structural defects." In cases where the property is in a defective state it may be well, if so intended, to insert the following qualification :—"except such defective portions of the sd premes as are mentd in the schdle hto, wch it shl not be incumbent on the lessee to keep or deliver up in a better state of repair than at psnt;" or a proviso that, "the covt hrinbfe contd for the repair of the sd premes shl not render it incumbent upon the lessee to keep or deliver up the sd premes or any pt throf in a better state of repair or condon than the same are in at psnt."

Alteration of demised premises.

It is a question of fact whether any alteration made by the lessee in the demised premises is a breach of a covenant to maintain and repair. The test is whether the act done changes the nature of the thing demised, regard being had to the user of the demised premises which is permissible under the lease: *Hyman* v. *Rose*, [1912] A. C. 623.

As to effect of covenant in lease of old house.

The principles governing the construction of the ordinary repairing covenants in leases, such as a covenant to keep in "tenantable repair," or (which is substantially the same thing) in "good repair," "proper repair," "substantial repair," or "repair" simply, were considered, and the prior cases discussed, in *Proudfoot* v. *Hart*, 25 Q. B. D. 42, by the Court of Appeal, by whom the law was laid down (in a manner differing materially from the rules enunciated in the Court below) to the effect, which seems reasonable, that the lessee under such a covenant is bound to keep the house in and, if need be, put it into such repair as makes it reasonably fit for occupation by the class of tenants who would be likely to take it, regard being had to

amend, & keep the sd messe & bldgs & [all new bldgs wch may at any time durg the sd term be erected on & all additions made to the sd demised (*a*)] premes, & the fixtures thrin, & the walls, fences, vaults [roads, sewers], drains, & appurts throf with all necy reparations, cleansgs, & amendmts whatsr.

12. And also will durg the sd term keep all the sd premes & The same. Short form.

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its age and character, although this may involve putting an old house into better repair than it was in at the commencement of the lease, even to the extent of having to renew any part which is past repair; *Lurcott* v. *Wakeley*, [1911] 1 K. B. 905; see *Anstruther-Gough-Calthorpe* v. *McOscar*, [1923] 2 K. B. 573, reversed, [1924] 1 K. B. 716; but if the house can be made fit for such occupation by merely patching up defects, the tenant is not bound to do more. Repair, however, is restoration by renewal or replacement of subsidiary parts of a whole, and if repair of the subject matter of the covenant has become impossible, a covenant to repair does not carry an obligation to reconstruct the entirety, a change of circumstances having arisen which could not have been in contemplation of the parties: *Lurcott* v. *Wakeley*, *sup.*, explaining and distinguishing *Lister* v. *Lane*, [1893] 2 Q. B. 212; *Wright* v. *Lawson*, [1903] W. N. 108, where it was held by the Court of Appeal that if the defect is an inherent one caused by original faulty construction, the lessee would not be liable to make it good under such a covenant. See also as to "tenantable repair," *Crawford* v. *Newton*, 36 W. R. 54; *London Corpn.* v. *G. W. & Met. Rly. Cos.*, [1910] 2 Ch. 314. As to the measure of damages for breach of a covenant to repair, see *Morgan* v. *Hardy*, 17 Q. B. D. 770; *Joyner* v. *Weeks*, [1891] 2 Q. B. 31; *Henderson* v. *Thorn*, [1893] 2 Q. B. 164; *Conquest* v. *Ebbetts*, [1896] A. C. 490; *Anstruther-Gough-Calthorpe* v. *McOscar*, *sup.*

The qualification "fair and reasonable wear and tear excepted" (the meaning of which is discussed in *Terrell* v. *Murray*, 45 Sol. J. 579, and see *Miller* v. *Burt*, 63 Sol. J. 117; *Citron* v. *Cohen*, 36 T. L. R. 560) is occasionally required, and frequently finds its way even into repairing leases, but as it goes far to nullify the covenant, it is obviously contrary to the intention in that case, and the practitioner should be cautioned against allowing its insertion. In *Davies* v. *Davies*, 38 Ch. D. 499, it was held that a tenant for years is liable for permissive waste, and that where a lease is granted under a power requiring that the lessee should not be made unimpeachable for waste, the introduction into the repairing covenant of an exception of "fair wear and tear and damage by tempest," invalidates the lease. This would seem to apply equally to the ordinary agreement for a yearly tenancy: see 7 Encycl. Prec. 101. It clearly applies to a lease granted under the S. L. Act, 1925, s. 42 (5); but a lease granted under the S. L. Act, 1925, s. 41, although "involving waste," would not be open to this objection. As to what amounts to waste, see *Lord Darcy* v. *Askwith*, Hob. 234; *West Ham, &c., Board* v. *East London, &c., Co.*, [1900] 1 Ch. 624. As to notices by lessor to lessee to repair, see Vol. 2, p. 332. As to excepting fair wear and tear.

As to how far a covenant to keep in repair imports a covenant to put in repair, see *Payne* v. *Haine*, 16 M. & W. 541; *Henman* v. *Berliner*, [1918] 2 K. B. 236.

(*a*) See *ante*, p. 791, note (*e*).

the fixtures, paintg, paperg & decorons throf in good & tenantable repair, order & condon internally & externally.

To maintain gardens and pleasure grounds, &c.

13. And also will at all times durg the sd term maintain the gardens & pleasure-grounds of the sd premes in good order & pperly planted, & carefully preserve the timber-trees, & all ornamental & fruit trees, bushes & shrubs, wch are now or may at any time durg the sd term be growg on the sd premes, & replace such of the shrubs & plants as may die, or require replacg.

To execute works required by local authority.

14. And also will execute all such works as are or may under or in psuance of any Act or Acts of Parliamt already or hrafter to be passed be directed or required by any District Council, local or public authority to be executed at any time durg the sd term upon or in respt of the sd demised premes whether by the landlord or tenant throf.

To pay proportion of expense of maintaining roads, sewers, &c.

15. And also will at all times durg the sd term [pay & contribute a rateable or due proportion of the expses] *or*, "bear & pay all costs & expses payable either by landlord or tenant in respt of the premes hby demised," of makg, repairg, maintaing, rebldg, & cleansg all ways, roads, pavemts, sewers, drains, pipes, water-courses, party-walls, party structures, fences, or other convenices, wch shl belong to or be used for the sd premes hby demised [or any addonal bldgs wch may be erected as afsd] in common with other premes near or adjoing thereto, such proportion [in case of difference to be settled by the surveyor for the time being of the lessor, whose decision shl be final, &] to be pd to the lessor on demand, & will keep the lessor indemnified against all such costs & expses as afsd.

To contribute towards keeping up ornamental garden or enclosure (*b*).

16. And also will pay to the lessor the yrly sum of £—— towards the expse, *or*, "a due proportion with the owners & occupiers of the other messes frontg the garden & plantation hrinar mentd (such proportion to be assessed by the surveyor for the time being of the lessor) of the expse," of keeping the garden & plantation in the centre of the sd square in good order & condon, & repairg & paintg the curb & iron railgs surroundg the same, until the lessor shl give notice in writg that he will cease to keep up the same garden or plantation as afsd, & the contribution of the lessee towards such expse as afsd shl be payable to the lessor yrly on the —— day of

(*b*) See *ante*, p. 781.

—— togr with the rent hby reserved ; & upon such notice as last afsd being given by the lessor, & thenceforward durg the continuance of the term hby grted, the lessee will (jointly with the lessees & occupiers of the other messes frontg the sd garden & plantation) maintain the same in good order, & supply the same with fresh flowers, plants, & shrubs, & repair & paint the curb & iron railg surroundg the sd garden, in all respects to the satisfon of the lessor, or his surveyor or agent.

17. And the sd demised premes so painted, repaired, cleansed, maintained, amended, & kept as afsd will, at the expiron or sooner determinon of the sd term, quietly yield up unto the lessor, togr with all addons & improvemts made thereto in the meantime, & all fixtures (*d*) of every kind in or upon the sd premes, or wch (*e*) durg the sd term may be affixed or fastened to or upon the same [except tenant's or trade fixtures]. To deliver up at end of tenancy in good repair (*c*).

18. And will at the determinon of the sd tenancy quietly yield up the sd premes with the fixtures wch now are, or at The same. Short form.

(*c*) In the absence of this clause the tenant is bound to give up possession at the end of the tenancy : *Henderson* v. *Squire*, L. R. 4 Q. B. 170 ; but see *Reynolds* v. *Bannerman*, [1922] 1 K. B. 719 ; and see Foa, 6th ed., 838. Allowing the premises to become infested with bugs is a breach of this condition : *Jones* v. *Joseph*, 87 L. J. K. B. 510.

(*d*) See Elph. Introd., 7th ed., 338. A covenant in this form without the words in brackets at the end of the form extends to tenants and trade fixtures : *Leschallas* v. *Woolf*, [1908] 1 Ch. 641 ; and see *Slough Picture Hall Co.* v. *Wade*, 32 T. L. R. 542 ; *Pole Carew* v. *Western Countries & General Manure Co.*, [1920] 2 Ch. 97. If a tenant removes and sells during the term fixtures which he has covenanted to yield up at the expiration of the term, the landlord may affirm the sale and recover the proceeds of sale immediately : *Re British Red Ash Collieries, Ltd.*, [1920] 1 Ch. 326. Where, as in the older forms after an enumeration of landlord's fixtures, the words " and all other fixtures " occur, they are restricted to landlord's fixtures under the doctrine of *ejusdem generis*, although there is no exception of trade fixtures, see *Bidder* v. *Trinidad Petroleum Co.*, 17 W. R. 153 ; *Bishop* v. *Elliott*, 11 Ex. 113 ; *Lambourn* v. *McLellan*, [1903] 2 Ch. at p. 277 ; and see *Mowats, Ltd.* v. *Hudson Bros., Ltd.*, 105 L. T. 400. Where tenants' or trade fixtures are excepted sometimes the covenant is only to deliver the landlord's fixtures specified in a schedule to the lease. As to what are "landlord's fixtures," see *Boswell* v. *Crucible Steel Co.*, [1925] 1 K. B. 119.

(*e*) In a long lease this is usually qualified by saying, " or wch at the expiron or sooner determinon of the sd term, or at any time during the last *seven* yrs throf may be affixed," &c.

any time durg the sd tenancy shl be thron in a good & tenantable state of repair & condon [except as afsd, *see* f. **17**].

To permit lessor to enter and view premises, and to repair on notice.

19. And also that it shl be lawful for the lessor, or his agents (*a*) twice or oftener in every yr durg the sd term, durg seasonable hours in the daytime, with or witht workmen or others, to enter the sd premes to view the state of repair & condon of the same, & of all defects & wants of reparation then & there found [& wch the lessee shl be liable to make good under the covts hrinbfe contd], to give or leave on the sd premes notice in writg to the lessee: And that the lessee will within the period of three calr months after such notice, or sooner if requisite, repair & make good the same accordg to such notice & the covt in that behalf hrinbfe contd.

The same. Short form.

20. And also will permit the landlord [or superior landlord], or his [or their respective] agents at any time to enter the sd premes, & examine the state of repair & condon throf: And will repair & make good all defects, of wch notice in writg shl be given by the landlord [or superior landlord] to the tenant, within three calr months after the giving of such notice.

Power to lessor to repair on default of lessee (*b*).

21. And also that if the lessee shl at any time make default in the pformce of any of the covts hrinbfe contd for or relatg to the repair of the sd premes, it shl be lawful for the lessor (but witht prejudice to the right of re-entry under the clause hrinar contained) to enter upon the sd premes, & repair the same at the expse of the lessee, in accordce with the covts & provons of these psnts, & the expses of such repairs shl be repaid by the lessee to the lessor on demand.

Power to lessor to enter to

22. And also will permit the lessor (*c*) or his surveyor or agent at any time or times durg (*d*) the sd term to enter the

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(*a*) In an underlease say, "the lessor & the superior landlord of the sd premes or their respective agents."

(*b*) The landlord would have no such right without express authority: Woodfall, 21st ed., 758; Foa, 6th ed., 270. The acting on this power might, but for the provision to the contrary, be held to be a waiver of the right of re-entry for breach of the covenant to repair: *Doe* v. *Lewis*, 5 Ad. & El. 277; see also Foa, 6th ed., 718, 719.

(*c*) In an underlease, if there is a similar covenant in the head-lease, say, "the lessor or the superior landlord, or their respective," &c.

(*d*) In a long lease, say, "during the last *seven* yrs of the sd term."

sd premes or any pt throf durg seasonable hours in the daytime, & to take schdles or inventories of the fixtures & things to be yielded up at the expiron of the sd term. take inventories of fixtures.

23. And also that it shl be lawful for the lessor (*e*) or his agents or workmen, & for the tenants & occupiers of the adjoing messes, at any time or times durg the sd term at seasonable hours in the daytime to enter upon the premes hby demised for executg repairs or alterons of or upon such adjoing premes makg good to the lessee all damage thereby occasd. Power to lessor to enter to repair adjoining premises.

24. And also that it shl be lawful for the lessor, or his agents, at any time within three calr months next bfe the expiron or sooner determinon of the sd term, to enter upon the sd premes, & to affix upon any suitable pt throf a notice-board for relettg the same, & that the lessee will not remove or obscure the same, & will permit all psons by order in writg of the lessor, or his agents, to view the sd premes at seasonable hours in the daytime witht interruption. To permit lessor before end of lease to put up notice for reletting, &c.

25. And also will repay to the lessor all sums wch he shl expend [in psuance of the covt of the lessor hrinar contained] for insurg the sd messe, bldgs, & premes against fire [or accident], every such sum to be so repaid on the qtrly [half-yrly] day for paymt of rent under this demise next ensug after the expenditure throf. To repay to lessor sums paid for insuring (*f*).

26. And also will forthwith insure & at all times durg the sd term keep insured against loss or damage by fire the sd messe, & all bldgs, erections, & fixtures of an insurable nature, To insure and rebuild in case of fire (*g*).

(*e*) See note (*c*) on previous page.

(*f*) It might be better to reserve the insurance money as extra rent, see f. 6, *ante*, p. 786.

(*g*) In an under-lease, the covenant must be in accordance with that in the head-lease as to the sum assured, and the office and names in which the insurance is to be effected. As to the covenant to insure, see 5 Dav. Prec., 2nd ed., 454, note; Elph. Introd., 7th ed., 333; Foa, 6th ed., 273 *et seq.*; Woodfall, 21st ed., 815 *et seq.* The benefit of this covenant runs with the reversion: *Vernon* v. *Smith*, 5 B. & Ald. 1.

A covenant to effect a policy with a particular company is to effect such a policy as is ordinarily issued by the designated office at the date or during the continuance of the lease. The landlord cannot insist on the tenant taking out a policy in a more extended form: *Upjohn* v. *Hitchens*, [1918] 2 K. B. 48; as to the liability of the tenant where the covenant is to make good any deficiency out of his own moneys, see *Enlayde Ltd.* v. *Roberts*, [1917] 1 Ch. 109.

wch at any time durg the sd term may be erected or placed upon or affixed to the sd demised premes (*a*), in the sum of £—— at the least, *or*, " to three-fourth pts of the value throf at the least," *or*, " to the full value throf," [such value to be determined by the surveyor for the time being of the lessor,] in the —— Insce Office, or in some other office of repute to be approved [prescribed] in writg by the lessor (*b*), in the name of the lessor, *or*, " in the joint names of the lessor & lessee " (*c*), [or in such other name or names as the lessor shl from time to time prescribe] : And will, whenever required, produce to the lessor, or his agent, the policy of every such insce, & the receipt for the last premium throf, [& that in default throf the lessor may (witht prejudice to the power of re-entry under the clauses hrinar contained) insure the sd premes in mner afsd & pay the premiums payable in respt throf, & that the premiums so pd & all incidental expses shl be repaid by the lessee to the lessor on demand]. And that, in case the sd messe, bldgs, & premes or any pt throf shl at any time durg the sd term be destroyed or damaged by fire (*d*), then & as often as the same shl happen, all moys reced in respt of such insce (*e*) shl with all convenient speed be laid out in rebldg, repairg, or orwise reinstatg the same premes in a good & substantial mner [& under the direction of the surveyor of the lessor] [accordg to the psnt plan & elevation (*f*) or in such other mner as

(*a*) The tenant is bound to insure existing buildings : *Sims* v. *Castiglione*, [1905] W. N. 112.

Variations for insurance of windows against accident.

(*b*) Where plate-glass windows are to be insured, add here, " & also insure & keep insured against loss or damage by accident or orwise all plate-glass windows in the demised premes to the full value throf in the —— Insce Office, or in some other office of repute to be approved [prescribed] as afsd."

(*c*) Insurance in the joint names of the lessor and lessee is inconvenient in practice.

(*d*) For plate-glass windows, add here, " or in case the sd plate-glass windows or any of them shl be destroyed or damaged by accident or orwise."

(*e*) As to the right to require insurance moneys to be laid out in reinstating the premises in the absence of special contract, see Elph. Introd., 7th ed., 333 ; 54 Sol. J. 357. The Fires Prevention (Metropolis) Act, 1774, s. 83, does not apply to chattels.

(*f*) For plate-glass windows, add here, " & as to the sd plate-glass windows, with glass of the same nature, quality, & thickness as at psnt."

shl be previously approved of in writg by the lessor], [& in case the moys reced in respt of the sd insce shl be insufft for that ppose, will make good the deficiency out of his own moys].

27. And will, durg the sd term, keep the sd messe, bldgs, & premes hby demised insured against fire in some responsible office in the sum of £—— at the least in the name of the lessor & whenever required produce to the lessor the policy & receipt for the last premium in respt of such insce, & that in case of the destruction or damage of the sd premes by fire the moys reced in respt of such insce shl be laid out in rebldg or reinstatg the same, [& in case such moys shl be insufft for such ppose the deficiency shl be made good by the lessee]. The same. Short form.

28. And also will not carry on or permit upon the sd premes any trade or occupon, or do or suffer any other thing wch may render any increased or extra premium payable for the insurce of the premes against fire, or wch may make void or voidable any policy for such insce, [and in particular will not at any time keep or store petrol in the sd garage except in the car tank & will not keep the car tank filled or refill the same with petrol in the sd garage at any time when any fire or light, other than electric or incandescent gas, shall be lit or burning therein]. Not to do anything to increase rate of insurance (*g*).

29. And also, if at any time durg the sd term any trade or occupon shl be carried on, or anything shl be done upon the premes, wch shl cause the premium to be charged by any such insce office as afsd to exceed the rate of £—— p.c. will give notice throf unto the lessor, & will also pay the extra premium so to be charged as afsd. If rate of insurance be increased, to give notice to lessor.

30. And also will, under the inspection & to the satisfon of the surveyor for the time being of the lessor, & in accordce with the plans, elevations, & specificons already, *or*, " to be," approved by him, [build & construct on the sd piece of land To build or finish a house, with variations (*h*).

(*g*) As to this covenant, see *Teape* v. *Douse*, 92 L. T. 319; *Chapman* v. *Mason*, 103 L. T. 390.

(*h*) For various covenants as to building which can readily be adapted to a lease, see *ante*, pp. 353 *et seq.* As to the necessity for this covenant where the lease is under a power, see *post*, p. 870. As to specific performance, see *Wolverhampton Corpn.* v. *Emmons*, [1901] 1 Q. B. 515; *Molyneux* v. *Richard*,

hby demised, one villa residence or dwellg-house of the cost value of at least £——, *or*, "of the yrly lettg value of at least *five* times the rent hby reserved (*i*) "] [*or, if partially built*, complete & finish the messe, bldgs, & erections, hby demised], with offices & outbldgs thereto annexed, & all necy & suitable fences, roads, foot-pavemts, ways, drains, & other works in connection therewith, AND will complete the same fit for habitation & use bfe the —— day of ——, unless prevented by fire, stress of weather, or strikes or combinations of workmen: [AND also will by means of vouchers or other reasble evidence when required, on or bfe the —— day of ——, satisfy the sd surveyor that the sum of £—— has been expended on the sd bldgs & works], [AND also will pay & discharge the reasble fees & charges of such surveyor].

To face buildings so as to increase light to adjoining property.

31. AND ALSO will face every bldg to be erected upon the sd plot of land hby demised on the side frontg towards —— Court afsd with white glazed bricks or tiles or with stucco or cement painted white or a light stone colour, & if faced with glazed bricks or tiles will keep the same thoroughly cleaned, or if faced with stucco or cement will repaint the same in a workmanlike mner with two coats of good oil paint once at least in every three yrs of the sd term.

Not to erect other buildings.

32. AND ALSO will not at any time durg the sd term witht the consent in writg of the lessor first obtained erect or place any addonal bldg or erection on any pt of the demised premes [other than a stable & coach-house, garage, entrance-lodge, gardener's cottage, greenhouses & summer-houses, or other similar out-bldgs suitable for the convenience of the occupiers of, & to be used as appurtenant to the sd messe hby demised, & for no other ppose].

Not to

33. AND ALSO will not at any time durg the sd term, witht

[1906] 1 Ch. 34. As to measure of damages for breach of covenant to build, see *Stephens* v. *Junior Army & Navy Stores*, [1914] 2 Ch. 516. A covenant to build within a prescribed time is not a continuing covenant and if it is broken the covenant to repair does not import an additional covenant to build: *Ibid.*, overruling on this point *Jacob* v. *Down*, [1900] 2 Ch. 156.

(*i*) There is no *ad valorem* duty on the value of buildings to be erected: see Stamp Act, 1891, s. 77 (2), which is not modified on this point by the Rev. Act, 1909, s. 8.

the licence in writg of the lessor first obtained (*a*), erect or suffer to be erected any new bldgs, on the premes hby demised [except as afsd] or make any alteron (*b*) or addon whatsr in or to the sd messes & premes hby demised or any bldgs wch may be erected on the sd premes [psuant to the provons hrinbfe contd, or] with such licence as afsd, either externally or internally, or make any alteron in any boundary, *or*, "party" wall, [*or*, "make any alteron in the plan, external construction, height, roof, walls, timbers, elevation, architectural appearce, or decorations of the sd messe & premes, or any bldgs, &c., *as above*, nor build or set up any erection or projection of any kind in the garden or yard in the front or rear of the sd messe or on any pt of the sd premes wch shl destroy or interfere with the uniformity of the sd premes with the adjoing houses, or wch may in any way obstruct or lessen the access of light or air to or interrupt the view from the adjoing houses or bldgs"], [& that, in case at any time durg the sd term there shl be occasion to rebuild the sd messe & bldgs, or any pt throf, or any permitted new bldg, alteron, addon, or any pt throf, or any boundary wall, whether by reason of destruction by fire or through decay, or from any other cause, the same shl be rebuilt accordg to the origl plan & elevations throf, or accordg to such other plan as shl be previously approved of in writg by the lessor, & not orwise].

make alterations in premises, &c., with variations.

34. And also, bfe makg any alterons (*b*) in the sd messe, or To obtain

(*a*) For a public-house, add, "& witht the consent of the licensg Justices given psuant to s. 71 of the Licensg (Consolidation) Act, 1910." As to alterations without the consent of the justices, see *Marshall* v. *Spicer*, 103 L. T. 902.

(*b*) As to what amounts to an alteration, see *Bickmore* v. *Dimmer*, [1903] 1 Ch. 158; *Re L. C. C. & Weir*, [1914] W. N. 204; *Joseph* v. *L. C. C.*, 111 L. T. 276; *L. C. C.* v. *Hutter*, [1925] Ch. 626.

Conversion of a dwelling-house into flats is a breach of this covenant: *Day* v. *Waldron*, 88 L. J. (K. B.) 937. But under s. 27 of the Housing, Town Planning, &c., Act, 1919, the Court may vary the terms of the lease so as to enable the house to be so converted, even if the house is not one which, if converted into tenements could be let for occupation by persons of the working class: *Johnston* v. *Maconochie*, [1921] 1 K. B. 239. See also L. P. Act, 1925, s. 84, as to the power given thereby to the Official Arbitrators appointed for the purposes of the Acquisition of Land (Assessment of Compensation) Act, 1919, to modify restrictive covenants affecting land where 50 years, of a term of more than 70 years created in land, have expired.

lessor's approval before altering premises

the outbldgs throf, or erectg any other bldgs on the sd demised premes or any pt throf, will obtain the approval in writg of the lessor to the plans & specificons of such intended alterons or bldgs, & make or erect the same in such mner as shl be so approved, & not in any other mner.

To remove buildings &c., in breach of covenant.

35. And also will on the request in writg of the lessor [or his agent] forthwith pull down & remove any bldg, erection, alteron, or addition erected or made in breach of any of the foregoing covts.

Not to cut main walls.

36. And also will not at any time cut, maim, or remove the main walls or timbers of the sd premes, unless for the ppose of supplyg & makg good any defect thrin wch shl be supplied & made good accordgly.

Not to commit waste (*d*).

37. And also will not at any time durg the sd term witht the consent in writg of the lessor, cut down or destroy any timber or timberlike trees now or hrafter standg or growg on the sd premes, or open, work, or dig for any mines, minerals, quarries, clay, gravel, or sand, in, upon, or under the same, but will to the utmost of his power keep the sd timber & trees in good preservon, & the sd mines, minerals, quarries, &c., unopened & unworked.

Not to use premises for trade, &c., with variations.

38. And also will not use the sd premes, or permit (*a*) the same to be used for the pposes of any trade, manufacture or business (*b*) of any description [or for burng bricks, clay, or refuse, or for puttg out clothg or other articles to dry or bleach], or as an asylum for lunatics or idiots, an institution for mental defectives or a hospital or other charitable institution, or by any public body or society, or for any school, or teachg of music, or as a tea-garden, or hotel, or tavern, or for the sale of beer, wine or spirits (*c*), or as a club, & will not hang, place, or deposit any goods or things for sale or orwise

(*d*) In the absence of a covenant damages for waste can only be recovered in tort: *Defries* v. *Milne*, [1913] 1 Ch. 98.

(*a*) As to what is "permitting," see *Hall* v. *Ewin*, 37 Ch. D. 74; *Powell* v. *Hemsley*, [1909] 2 Ch. 252; *Berton* v. *Alliance Co., Ltd.*, [1922] 1 K. B. 742; *Atkin* v. *Rose*, [1923] 1 Ch. 522; and see *post*, p. 867, note.

(*b*) As to what is a "business," see *Rolls* v. *Miller*, 27 Ch. D. 71 (Charitable Institution); a "trade," see *Doe* v. *Bird*, 2 Ad. & El. 161; a "boarding house," *Hobson* v. *Tulloch*, [1898] 1 Ch. 424; a "club," *McNair* v. *Baker*, [1904] 1 K. B. 208; and *ante*, p. 366.

(*c*) See *Buckle* v. *Fredericks*, 44 Ch. D. 244.

outside of any pt of the premes, or in, upon or over the yard, garden, or area throf, nor exhibit or permit in, upon, or about the sd premes any bill or placard intimatg or givg notice that a pt of the sd premes (less than the whole) is to let furnished or unfurnished, nor put up, or permit, in or upon any pt of the sd premes, any bill, notice, door-plate, or advertisemt (*d*), or any outward mark or show of business (*e*), nor at any time have or permit any sale by auction, exhibition, or public meetg or public entertainmt, to be held in or upon the sd premes witht the consent in writg of the lessor.

To use as private dwelling-house only (*f*).

39. And also will use & occupy the sd messe as a private dwelling-house only [& the sd coach-house & stable as a private coach-house & stable, & the rooms over the same for the lodgg of servants or others in the employmt of the lessee], & for no other ppose, [& that if the premes are occupied by a medical man he shl not receive lunatics or other patients to reside in the house, nor have any dispensary or shop for dispensg or sellg medicines on the premes], *or*, "that every bldg erected on the land hby demised shl be used only as a private dwelling-house or a coach-house, stable, garage, or other outbldg belongg thereto, & that so much of the sd land as shl remain unbuilt upon shl be used only as the yards, gardens, or pleasure-grounds of such dwelling-house & premes."

To use as offices only.

40. And also will not use or occupy the sd premes, or permit the same to be used or occupied orwise than as offices, or for any ppose, or in any mner inconsistent with such user or occupon, nor so as to be a nuisance, annoyce, or damage to the owners or occupiers of the other offices or rooms in the same house, or the adjoing houses.

(*d*) Letting the gable ends of a house as a bill-posting station is a breach of a covenant not to carry on any trade or business upon the premises: *Tubbs* v. *Esser*, 26 T. L. R. 145.

(*e*) See *Evans* v. *Davis*, 10 Ch. D. 747; *Att.-Gen.* v. *Playhouse, Ltd.*, 19 T. L. R. 580.

(*f*) See *German* v. *Chapman*, 7 Ch. D. 271; *Hobson* v. *Tulloch*, [1898] 1 Ch. 424; see other forms, *ante*, pp. 364 *et seq.* As to "flats," see *Rogers* v. *Hosegood*, [1900] 2 Ch. 388; and as to "paying guests," see *Porter* v. *Gibbons*, 48 Sol. J. 814; *Thorn* v. *Madden*, [1925] Ch. 847. A covenant in an underlease that the underlessee should use the premises only for residential purposes but should be entitled to carry on thereon a boarding establishment was held to be an absolute covenant by the underlessor, as against all the world, that the underlessee should be at liberty to carry on a boarding establishment: *Milch* v. *Coburn*, 55 Sol. J. 441.

Not to carry on offensive trades, &c. (*g*).

41. And also will not carry on or permit upon the sd premes, or any pt throf, any offensive, noisy, or dangerous trade, business, manufacture, or occupon, or any nuisance, nor use the same, nor allow the same to be used [as a factory or workshop within the meaning of the Factory & Workshop Act, 1901 (*h*) or] for any illegal or immoral (*i*) ppose, but will use the same as a private dwelling-house, or for carryg on handicrafts or occupons of a quiet & inoffensive nature only.

Provisions as to fire escapes in factories and as to underground bakehouses (*a*).

42. And also that all costs, charges & expses incurred by the lessor in complyg with the requiremts of any notice duly served on him under s. 14 [in making any structural alterons required for the ppose of obtaing a certfe under s. 101] of the Factory & Workshop Act, 1901, togr with intt thron at the rate of £5 p.c. p.a. from the time when they shl be pd by the lessor until repaymt shl be pd to the lessor by the lessee on demand & until such paymt shl be charged in favour of the lessor on the premes hby demised.

Not to do any act to the damage or annoyance of the lessor, or his tenants, &c.

43. And also that no act, or thing, wch shl or may be, or become a nuisance (*b*), damage, annoyce, or inconvenience to [the lessor (*c*), or his tenants, or] the occupiers of any of the adjoing or neighbouring houses, or the neighbourhood shl be done upon the sd premes or any pt throf.

To prevent obstruction of easement.

44. And also will use his best endeavours to prevent any easemt or right belongg to or used with the premes hby demised from being obstructed or lost.

(*g*) See *ante*, pp. 366–367, forms *f* (1)–(7). As to the right of a lessee to enforce restrictive covenants by other lessees with the lessor, see *Ashby* v. *Wilson*, [1900] 1 Ch. 66.

(*h*) See ss. 115, 149 of the Act.

(*i*) See Criminal Law Amendment Act, 1885, s. 13, as amended by the Act of 1912, s. 4. As to the determination of a tenancy on conviction for permitting the use of the demised premises as a brothel, see s. 5 of the last-mentioned Act, and as to what may be included in immoral purposes, see *Upfill* v. *Wright*, [1911] 1 K. B. 506.

(*a*) As to fire escapes, see Factory and Workshop Act, 1901, s. 14; and as to underground bakehouses, see s. 101. See also the definition of "owner" in s. 156; and *ante*, p. 798.

(*b*) As to the effect of this covenant, see *Bamford* v. *Turnley*, 3 B. & S. 62; *Walter* v. *Selfe*, 4 De G. & Sm. 315; *Harrison* v. *Good*, L. R. 11 Eq. 338; *Tod-Heatley* v. *Benham*, 40 Ch. D. 80; *Errington* v. *Birt*, 105 L. T. 373, *ante*, p. 367, note (*a*).

As to the use of premises for revolutionary propaganda, see *Litvinoff* v. *Kent*, 34 T. L. R. 298.

"Adjoining."

(*c*) In an underlease, say, "the lessor or the superior landlord."

45. And also will not stop up, darken, or obstruct any windows or light belongg to the bldgs hby demised, or any adjoing (*d*) or neighbouring bldgs [now or hrafter] belongg to the lessor. Not to obstruct windows.

46. And will not allow any encroachmt to be made or easemt acquired on or over the demised premes, & in parlar will not allow the right of the access of light from or over the demised premes to any neighbourg ppty to be acquired, & if any encroachmt or easemt shl be made or threatened to be made, or if any window or opening shl be opened or made, or threatened to be opened or made, in any neighbourg bldg (whether already or hrafter to be erected), wch if not obstructed might by lapse of time confer the right to such access of light on the owner of any neighbourg ppty, will forthwith give notice throf to the lessor & permit him & his servants to enter upon the demised premes to inspect the same, & will at the cost of the lessee do all such things as may be pper for the ppose of preventg the making of such encroachmt or the acquison of such easemt or right, includg where necy the makg & maintaing of a hoardg for the ppose of preventg the access of light to such window or opening; and further that if the lessee shl omit or neglect to do all such things as afsd at the earliest possible time it shl be lawful for the lessor, his servants & workmen to enter upon the demised premes & to do the same; & that any costs incurred by the lessor under this provon, togr with intt thron at the rate of £5 p.c. p.a., from the time when the same shl be pd by him until repaymt shl be repaid to him by the lessee, & [if the same shl be incurred by the lessor within twenty-one yrs from the date of these psnts] until paymt shl be charged in his favour on the demised premes. Not to allow encroachment (*e*).

(*d*) As to the meaning of "adjoining" in this covenant, see *Ind, Coope & Co.* v. *Hamblin*, 84 L. T. 168; *Vale* v. *Moorgate Street Buildings, Ltd.*, 80 L. T. 487; *Cave* v. *Horsell*, [1912] 3 K. B. 533; *Derby Motor Cab Co.* v. *Crompton*, 29 T. L. R. 673, and cf. cases cited, *post*, p. 809, note (*b*). As to the words in brackets, see *Buckell* v. *King*, 40 Sol. J. 50, where the expression "buildings belonging to the lessor" was held to include only buildings belonging to him at the date of the lease.

(*e*) As to the effect of a tenant of the dominant tenement giving the consent mentioned in s. 3 of the Prescription Act, 1833, see *Hyman* v. *Van Den Berg*, [1907] 2 Ch. at p. 531; [1908] 1 Ch. 167; and see *ante*, p. 59, note.

Not to assign or underlet without licence (*k*).

47. And also will not (*f*) assn (*g*) [transfer, underlet (*h*), or pt with the posson of (*i*)] the sd premes or any pt throf (*i*) or pt with or share the posson or occupation thereof or of any pt thereof (*j*) (orwise than by will) [or by underlettg the same with or witht the furniture thrin for any term not exceedg *one* yr]

(*f*) In a building lease, insert here :—" at any time durg the last *seven* yrs of the sd term hby grted."

(*g*) *I.e.*, make a legal assignment: *Gentle* v. *Faulkner*, [1900] 2 Q. B. 267; *Horsey Estate, Ltd.* v. *Steiger, &c., Ltd.*, [1899] 2 Q. B. 79; *C. S. Co-operative Society, Ltd.* v. *McGrigor*, [1923] 2 Ch. 347.

The tenancy of the original lessee can be determined, for breach of this covenant, by proceedings against the assignee, where the lessee cannot be found: *Commissioners* v. *Hull*, [1922] 1 K. B. 205.

(*h*) A mortgage by sub-demise is a breach of the covenant not to underlet: see *Serjeant* v. *Nash*, [1903] 2 K. B. 304; Foa, 6th ed., 318.

(*i*) See *Church* v. *Brown*, 15 Ves. at p. 265; *Grove* v. *Portal*, [1902] 1 Ch. 727; *Wilson* v. *Rosenthal*, 22 T. L. R. 233; *Chatterton and Terrell*, [1923] A. C. 578; *Roberts* v. *Enlayde, Ltd.*, [1924] 1 K. B. 335; *Russell* v. *Beecham*, [1924] 1 K. B. 525; *Abrahams* v. *MacFisheries, Ltd.*, [1925] 2 K. B. 18; and the cases in 1 Smith's L. C., 12th ed., 50.

(*j*) *Jackson* v. *Simons*, [1923] 1 Ch. 373.

As to covenant against assignment, &c., without licence.

(*k*) See Elph. Introd., 7th ed., 340; *West* v. *Dobb*, L. R. 5 Q. B. 460; *Varley* v. *Coppard*, L. R. 7 C. P. 505; *Bristol Corpn.* v. *Westcott*, 12 Ch. D. 461; *Abrahams* v. *MacFisheries, supra.* This covenant runs with the land and binds the assigns of the lessee even though they are not expressly mentioned: *Goldstein* v. *Sanders*, [1915] 1 Ch. 549; *Re Stephenson & Co.*, [1915] 1 Ch. 802; see also L. P. Act, 1925, s. 79. The grant of exclusive licence to use refreshment bars in a theatre is not a breach of this covenant: *Edwardes* v. *Barrington*, 85 L. T. 650; nor is adjudication in bankruptcy on the petition of the lessee: *Re Riggs*, [1901] 2 K. B. 16; but the covenant is broken by an assignment by the liquidator of a company in liquidation, whether voluntary or compulsory, as such an assignment is the act of the company though made by the liquidator: *Cohen* v. *Popular Restaurants, Ltd.*, [1917] 1 K. B. 480; *Re Farrow's Bank Ltd.*, [1921] 2 Ch. 164. The original lessee is within the scope of the covenant: *McEacharn* v. *Colton*, [1902] A. C. 104. If the lessor is not to withhold his consent to an assignment, &c., to a responsible person, or " arbitrarily," and he withholds it, his consent is not necessary to render such an assignment valid: *Hyde* v. *Warden*, 3 Ex. D. 72; *Treloar* v. *Bigge*, L. R. 9 Ex. 151; *Sear* v. *House Property, &c., Society*, 16 Ch. D. 387; *Bates* v. *Donaldson*, [1896] 2 Q. B. 241; *West* v. *Gwynne*, [1911] 2 Ch. 1; *Ideal Film Renting Co.* v. *Nielsen* [1921] 1 Ch. 575; *Re Winfrey & Chatterton*, [1921] 2 Ch. 7; and see *Premier Rinks, Ltd.* v. *Amalgamated Theatres, Ltd.*, [1912] W. N. 157; *Houlder* v. *Gibbs*, [1925] Ch. 575; but his consent must be asked for: *Barrow* v. *Isaacs*, [1891] 1 Q. B. 417; *Eastern Telegraph Co.* v. *Dent*, [1899] 1 Q. B. 835; and the terms of a proposed sublease disclosed: *Fuller's Theatre, &c., Ltd.* v. *Rofe*, [1923] A. C. 435; and see *Shanly* v. *Ward*, 29 L. T. R. 714; *Lewis & Allenby* v. *Pegge*, [1914] 1 Ch. 782; *Abrahams* v. *MacFisheries, Ltd.*, [1925] 2 K. B. 18; *Millard* v.

witht the previous consent in writg of the lessor [but so that such consent shl not be withheld to an assnmt or underlettg of the sd premes to a respectable & responsible pson ; *or* " shl not

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Humphreys, 62 S. J. 505, where the consent was to be in writing. As to the procedure where the lessor attaches an unreasonable condition to the licence, see *Young* v. *Ashley Gardens, &c., Ltd.*, [1903] 2 Ch. 112 ; *West* v. *Gwynne, sup.* A refusal to consent to an assignment to brewers on the ground that the lessor wished the house to remain " free " is not unreasonable : *Re Marshall & Salt*, [1900] 2 Ch. 202. But a refusal to consent to an assignment of licensed premises on the ground that the proposed assignee would not reside on the premises, there being nothing in the lease to compel the tenant to reside, is unreasonable : *Mills* v. *Cannon Brewery Co.*, [1920] 2 Ch. 38 ; so also is a refusal which has no reference to the personality of the proposed assignee or to the subject matter of the lease : *Houlder* v. *Gibbs, supra.* As to the rights of a landlord occupying part of the premises, see *Re Spark*, [1905] 1 Ch. 456. Where the tenant " parted with " possession of part of the premises the covenant was held not to be within exception of s. 14 (1) and (6) of the C. Act, 1881 : *Russell* v. *Beacham*, [1924] 1 K. B. 525. This covenant which was excepted out of s. 14 of the C. Act, 1881, is now included in L. P. Act, 1925, s. 146, where the breach occurs after 1925. As to the right of re-entry on a breach of it, see *Barrow* v. *Isaacs*, [1891] 1 Q. B. 417. Under exceptional circumstances, an underlessee can obtain relief on forfeiture of the head lease on breach of this covenant : *Imray* v. *Oakshette*, [1897] 2 Q. B. 218 ; *Matthews* v. *Smallwood*, [1910] 1 Ch. 777 ; *Fuller's Theatre, &c., Ltd., and Rofe, sup.* ; and see *Hurd* v. *Whaley*, [1918] 1 K. B. 448. A covenant not to assign without licence, though commonly inserted in rack-rent leases, is not, technically, a " usual " covenant : *Re Lander & Bagley*, [1892] 3 Ch. 41 ; and see *De Soysa* v. *De Pless Pol*, [1912] A. C. 194.

In the absence of express provision in the lease to the contrary, every lease, whether executed before or after 1893 (*West* v. *Gwynne*, [1911] 2 Ch. 1), is to be deemed to be subject to a proviso against the payment of a fine in respect of the grant of a licence to assign : L. P. Act, 1925, s. 144 ; when, however, the licence is applied for the parties may agree that a fine shall be paid, and if such a payment be made by a lessee not under protest it cannot be recovered, see *Andrew* v. *Bridgman*, [1908] 1 K. B. 596 ; as to the taking of a fine, see *Waite* v. *Jennings*, [1906] 2 K. B. 11 ; *Jenkins* v. *Price*, [1908] 1 Ch. 10 ; *Evans* v. *Levy*, [1910] 1 Ch. 452 ; *West* v. *Gwynne, sup.* In *Re Cosh*, [1897] 1 Ch. 9, it was held that the deposit of a sum of money by way of security for the performance of certain covenants was not a fine. As to damages for breach of the covenant, see *Lepla* v. *Rogers*, [1893] 1 Q. B. 31.

As to restrictions on fines or premiums under The Increase of Rent, &c., Act, 1920, see p. 843, *post.*

Registration.

A lease containing an absolute prohibition against alienation cannot be registered : L. R. Act, 1925, s. 8 (2) ; land held under a lease containing a prohibition against alienation without licence must be registered with qualified title only, and all estates, &c., arising on alienation without licence are to be excepted from the effect of registration : L. R. R. 45.

Proviso in lease of business premises.

be unreasbly, arbitrarily, or vexatiously withheld (*a*) "] [PROVD THAT it shl be lawful for the lessee to take a ptner or ptners in his sd business carried on in the sd demised premes, & also to remove or dispose of any of the engines, machinery, bldgs, erections, & other things thron, for the ppose of replacg or renewg the same, & such act shl not be deemed to be a breach of the covt lastly hrinbfe contd], [& also will not suffer any

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Power to withhold licence.

(*a*) The latter form is preferable as the condition of the property may afford a reasonable ground for refusing consent though the proposed assignee is a respectable and responsible person: *Goldstein* v. *Sanders*, [1915] 1 Ch. 549. A corporation is a person, and may be a respectable and responsible person within the meaning of this covenant: *Willmott* v. *London Road Car Co.*, [1910] 2 Ch. 525. Cases may occur where an act of an under-tenant, which seriously diminishes the value of the property, is not a breach of the covenants by the lessee in the ordinary form: *Bryant* v. *Hancock & Co., Ltd.*, [1899] A. C. 442; *Wilson* v. *Twamley*, [1904] 2 K. B. 99; *Palethorpe* v. *Home Brewery Co., Ltd.*, [1906] 2 K. B. 5; *Mackusick* v. *Carmichael* [1917] 2 K. B. 581, though if the covenant is negative the underlessee may be restrained from breaking it: *Holloway* v. *Hill*, [1902] 2 Ch. 612; see *post*, p. 977. It may therefore be proper, in cases where the words in this bracket are inserted, to insert in this place the proviso following:—

"PROVD that it shl be lawful for the lessor to withhold such consent unless the lessee shl, bfe the assnmt or underlease, or any agrmt for the same shl be executed, execute & delr to the lessor a deed to be prepared by the solor for the time being of the lessor at the cost of the lessee, containing a covt by the intended assn or underlessee with the lessor to pform & observe during the term assned or grted to him the covts by the lessee & condons contained in this lease in the same mner as if such covts & condons were thrin repeated with the substitution of the name of the intended assign or underlessee for the name of the lessee, & with such other alterons as the deaths of pties & other circes shl render necy, & also containg a provon determing the term thby grted on breach of any of the sd covts by the intended assign or underlessee."

If it is desired to prevent assignments of underleases add "And it is hby agrd that every permitted underlease of the sd premes or any pt throf shl contain a covt by the underlessees or underlessee with the lessor not to assn or underlet the premes comprised in such underlease witht the consent in writg of the lessor."

Co or any pson (other than the lessee) to occupy the sd premes or any pt throf as a licensee (*a*)].

48. And also that the lessee will, within three calr months next after any absolute transfer, assnmt or devolution of his intt under this psnt lease in the sd demised premes, or any pt throf, give notice in writg of such transfer, assnmt, or devolution, & of the name, quality, & place or places of abode of the transferee or transferees or assnee or assnees to the lessor or his solor, & produce to him the instrumt of such transfer, assnmt, or devolution, & pay to him a fee of £—— for the registron of such notice.

To give lessor notice of assignment of lease.

49. And also will not assn or underlet the sd premes, or any pt throf, for all or any pt of the sd term, witht first makg offer for the sale or disposition of his este or intt thrin to the lessor, provd the lessor will give as great a price or conson as any other pson would give for the same.

To give lessor right of pre-emption in case of assignment, &c. (*b*).

50. And also that it shl be lawful for the lessor or any pson or psons by him authorised in that behalf, at any time to enter upon the sd demised premes for the ppose of constructg, layg down, alterg, repairg, cleansg, emptyg, or maintaing any sewers, watercourses, cesspools, gutters, drains, water-pipes, [electric wires], or gas-pipes, in connection with, or for the accommodon of, any adjoing ppty, doing as little damage as may be to the sd premes hby demised, & restorg the surface of the soil, & everythg erected thron, witht any unreasble delay, but witht makg compenson for any temporary damage or inconvenice to the lessee, & so that no new sewer, *&c.*, shl pass under or through the sd messe hby demised.

To permit lessor to lay down drains and gas and water-pipes in connection with adjoining property.

51. And that it shl be lawful for the lessor at any time durg the sd term to erect, rebuild, or alter any bldgs or

To permit lessor to obstruct lights and easements (*c*).

(*a*) See *Peebles* v. *Crosthwaite*, 13 T. L. R. 198; *Edwardes* v. *Barrington*, 85 L. T. 650; *Jackson* v. *Simons*, [1923] 1 Ch. 373; *Chaplin* v. *Smith*, [1926] 1 K. B. 198, where the covenant was extended as in form 47, *sup.*, to sharing possession or occupation.

(*b*) See *Manchester Ship Canal Co.* v. *Manchester Racecourse Co.*, [1901] 2 Ch. 37; *Ryan* v. *Thomas*, 55 Sol. J. 364.

(*c*) This covenant is of course effectual according to its tenor, *Haynes* v. *King*, [1893] 3 Ch. 439, and excludes the application of *Mitchell* v. *Cantrill*, 37 Ch. D. 56, where words negativing the implication of a grant of lights were held not to preclude the lessee from acquiring them by prescription against the lessor. See *ante*, p. 59. As to the meaning of "adjoining" in this covenant, see *Haynes* v. *King*, [1893] 3 Ch. 439; *White* v. *Harrow*, 50 W. R. 259; and cf. cases cited *ante*, p. 805, note (*d*).

Covenant excluding right to lights.

erections facing, adjoing or near to the sd demised premes to any extent & in any mner he may think fit, notwithstdg that the bldg so erected, rebuilt or altered, may obstruct or interfere with any right of light or air for the time being appertaing to or enjoyed with the sd demised premes or any pt throf or any bldg for the time being thron.

Disputes between lessee and other tenants of lessor to be referred to his surveyor.

52. And also that, in case at any time durg this demise any dispute shl arise betn the lessee & any other of the tenants of the lessor relatg to the premes to them resply demised, or the party or other walls, lights, drains, watercourses, or other easemts, rights, or appurts whatsr relatg or belongg thereto, or any repairs thereto, or any nuisance or annoyce arisg thfrom, then & in every such case such dispute (provd the other party thereto shl also have agrd or become bound so to refer the same) shl be referred to the determinon & award of the surveyor for the time being of the lessor, wch shl be final & bindg on the lessee.

General covenant by an underlessee to perform the covenants in the headlease (*d*).

53. And also will at all times durg the sd term duly pform & observe all the covts, agrmts, & provons affectg the sd premes hby demised wch are contained in the superior lease of the sd premes dated, &c., & on the pt of the lessee thrunder to be pformed & observed (except the covts for paymt of rent, &c., *here specify any other exceptions*), & will not at any time do, omit, or suffer anything whereby such superior lease may be avoided or forfeited; And will at all times keep indemnified the lessor against all actions, proceedings, costs, damages, claims, demands, & liability, for, or in respt of, any breach wch may be committed durg the sd term of any of the sd covts, agrmts & provons, except as afsd.

(*d*) See *Penley* v. *Watts*, 7 M. & W. 601; *Hornby* v. *Cardwell*, 8 Q. B. D. 329; 26 Sol. J. 528, 544; *Pontifex* v. *Foord*, 12 Q. B. D. 152; Elph. Introd., 7th ed., 353; Foa, 6th ed., 267 *et seq.*

LESSOR'S COVENANTS.

Commencement.

1. And the lessor hby (*a*), covts with the lessee [in mner follg, that is to say :]

The same.

2. And the lessors do hby (*a*), covt, &c.

Several lessors.

3. That the lessors will durg the sd term pay all existg & future rates, taxes, charges, [assessmts, impositions] & outgoings whatsr (whether parliamentary, parochial, or local) for the time being payable in respt of the sd demised premes, [except such & such pts of the sd rates, taxes, charges, [& electric lighting charges] & outgoings, as are hrinbfe covted to be paid by the lessee], [& except gas & water rates [assessmts, impositions], wch are to be pd by the tenant].

To pay rates and taxes (*b*).

As to lessor's covenants binding assigns.

(*a*) As to the statutory provisions making the burden of the lessor's covenants run with the land, see *ante*, p. 779, note; and as to the omission in the formal part of the covenant of any express reference to the assigns or successors in title of the lessor and lessee respectively, see *ante*, p. 710. Where the lessors are trustees the following provisions may be added here if desired to protect them from personal liability under the covenants (other than for quiet enjoyment) after parting with the estate:—" to the intent to bind the reversion of the sd demised premes expectant on the term hby grted & the psons or pson from time to time entitled thereto so far as they lawfully can or may, but not so as to render themselves resply psonally liable in damages except for their own psonal acts & defaults."

Restriction of personal liability of trustees.

Under-lessees are not assigns of the head-lessees so as to be able to sue the lessor on his positive covenants, see *South of England Dairies, Ltd.* v. *Baker*, [1906] 2 Ch. 631. A lessor who has assigned his reversion remains liable on his covenants in the lease: *Stuart* v. *Joy*, [1904] 1 K. B. 362.

(*b*) See *ante*, p. 789, note (*e*). Where the lessor covenants to pay land tax, he pays on the rent he receives, not on the rent at which the premises are taxed: *Yaw* v. *Leman*, 1 Wils. K. B. 21; *Mansfield* v. *Relf*, [1908] 1 K. B. 71. Where the lessor covenants to pay all rates and taxes now payable or hereafter to become payable, and the assessment is afterwards increased owing to a profit rental being obtained in consequence of a permitted sub-lease, the lessor must pay the increase: see *Salaman* v. *Holford*, [1909] 2 Ch. 602. To avoid this it may be desirable, especially in the case of buildings to be let as flats, to add the following proviso: "Provd that if by reason of the lessee underleasing the demised premes or any pt throf the assessmt value throf becomes increased, the lessee shl indemnify the lessor against such pt of the sd rates, charges, [assessmts, impositions] & other outgoings as shl be attributable to such increased assessmt." Water rates, if

To repair outside of premises (c).

4. And also will at all times durg the sd term keep the outer walls, roof, & outside of the sd messe & bldgs in pper & substantial repair.

To execute sanitary works.

5. And also will at any time durg the sd term, execute any works wch by any report made by the surveyor to the sanitary authority of the district shl be certified to be necy in order to put the sd premes into good sanitary order & condon.

To repair in lease of a flat or part of a house to be used as offices.

6. And also will at all times durg the sd term, keep the main walls & timbers, roof, drains, & exterior of the sd bldg & premes, & the staircase, hall, lifts, passages, [water-closets, & lavatories], & such other internal pts throf as shl from time to time be used by the lessee, in common with the owners or occupiers of the other rooms or offices in the sd bldg, *or*, " with

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intended to be included in the covenant by the lessor, should be expressly mentioned, *Badcock* v. *Hunt*, 22 Q. B. D. 145; but even if they are not mentioned the circumstances may show that the lessor was intended to pay them, see *Bourne* v. *Salmon & Gluckstein, Ltd.*, [1907] 1 Ch. 616; see also *Drieselman* v. *Winstanley*, 53 Sol. J. 631; and a covenant by the lessor to pay water rates simply will not extend to rates on water used for trade purposes: *Re Floyd*, [1897] 1 Ch. 633. As to the charge of water rates, see 52 Sol. J. 24. A covenant by a lessor to pay rates is a contract of indemnity: *Atkins* v. *Hutton*, 103 L. T. 514.

Lessor's covenants to repair.

(c) The lessor is not liable under this covenant unless he has received notice of the want of repair: *Makin* v. *Watkinson*, L. R. 6 Ex. 25; *Manchester, &c., Co.* v. *Carr*, 5 C. P. D. 507; *Huggall* v. *McKean*, 1 Cab. & El. 391; *Griffin* v. *Pillett*, [1926] 1 K. B. 17; and see Vol. 2, p. 333; nor to repair premises worn out by age: *Torrens* v. *Walker*, [1906] 2 Ch. 166; and see Foa, 6th ed., 271, note (*u*). But the rule as to want of notice does not apply if the premises which he has covenanted to repair are in the possession and control of the lessor: *Melles & Co.* v. *Holme*, [1918] 2 K. B. 100; and see *Murphy* v. *Hurly*, [1922] 1 A. C. 369. As to whether the lessee may repair on the lessor not doing so and deduct the costs from his rent, see 17 L. Q. R. 26; Foa, 6th ed., 617. As to the liability of the lessor to repair in the absence of a covenant, see Woodfall, 21st ed., 757; as to his liability where the premises are let in flats, see 49 Sol J. 443; Woodfall, 21st ed., 870. As to the warranty implied in the letting of a furnished house, see *post*, p. 850.

As to any contract for letting for habitation a dwelling house at a rent not exceeding, in London £40 and elsewhere £26 there is a statutory implied condition that the house is at the commencement of the tenancy, and an undertaking that it will be kept by the landlord during the tenancy in all respects reasonably fit for habitation; this condition is not to be implied when a house is let for not less than three years upon the terms that it be put by the lessee into a condition reasonably fit for habitation, and the lease is not determinable at the option of either party before the expiration of three years: see Housing Act, 1926, s.1. The implied condition covers a latent defect in the ceiling: *Fisher* v. *Walters*, W. N. (1926) 155.

the other tenants of the lessor," in good & substantial repair, & in clean & pper order & condon, [& properly lighted], & also will keep the floorg & timbers above the sd demised premes & all the upper pts of the sd bldg, & all cisterns & water pipes thrin in such good & substantial order & condon as will prevent any injury to the sd demised premes or the furniture or contents throf from leakage by water or orwise, & make good all damage thereto caused by any such want of repair or leakage or by any negligence or act of any of the occupiers of the upper pts of the sd bldg, *or*, of any of the other tenants of the lessor (*d*).

To insure.

7. And also will at all times durg the sd term (unless such insce shl be vitiated by an act of the lessee) insure & keep insured the sd demised messe & premes against loss or damage by fire in some insce office of repute in the sum of £—— at the least, & will, whenever required, produce to the lessee the poly or pols of such insce, & the receipt for the last premium for the same: And further, that in case of destruction of or damage to the sd premes, or any pt throf by fire, the lessor will, with all convenient speed spend & lay out all moys reced in respt of such insce in rebldg or reinstatg in a good & substantial mner the premes so destroyed or damaged (*e*), & in case such moys shl be insufft for such ppose, will make good such deficiency out of his own moys.

The same. Short form.

8. And also will adequately insure the sd premes against fire, & in case of destruction or damage by fire, will rebuild or reinstate the same.

Not to build so as to obstruct lights (*f*).

9. And also that no bldg or erection shall at any time durg the sd term be erected or placed in the garden or rear of the house No. —— in —— Street, & abuttg on the east side of the sd premes hby demised, so as in any mner to obstruct or

(*d*) See *Anderson* v. *Oppenheimer*, 5 Q. B. D. 602.

(*e*) See 54 Sol. J. 357. As to the liability of the lessor for loss arising from a risk excepted from the terms of the policy, such as military operations, see *Enlayde Ltd.* v. *Roberts*, [1917] 1 Ch. 109; and *ante*, p. 797, note (*g*). The provision that the lessor should lay out the insurance moneys in rebuilding or reinstating the premises should be inserted in the lessee's interest.

(*f*) See *Ricketts* v. *Enfield Churchwardens*, [1909] 1 Ch. 544, where a covenant by the lessor not to infringe a building line was held to run with the land demised.

interfere with the access of light or air to any windows or opengs now existg in the same premes.

For quiet enjoyment (*a*).

10. And that the lessee payg the rent hby reserved, & pformg & observg the sevl covts, condons, & agrmts hrin contained, & on his pt to be pformed & observed (*b*), shl & may peaceably & quietly hold & enjoy the sd premes hby demised durg the term hby grted witht any lawful interruption or disturbance from or by the lessor, his hrs or assns, or any pson or psons claimg under or in trust for him (*c*).

The same. Short form.

11. That the tenant, so long as he shl pay the rent hby reserved, & pform the covts on his pt hrin contained, may hold & quietly enjoy the sd premes durg the sd term witht interruption by the landlord, or any pson claimg under or in trust for him.

As to covenant for quiet enjoyment.

(*a*) See Norton on Deeds, 553. As to what amounts to a breach of this covenant, see *Sanderson* v. *Berwick Corpn.*, 13 Q. B. D. 547; *Jenkins* v. *Jackson*, 40 Ch. D. 71; *Robinson* v. *Kilvert*, 41 Ch. D. 88; *Aldin* v. *Latimer, &c.*, [1894] 2 Ch. 437; *Hudson* v. *Cripps*, [1896] 1 Ch. 265; *Cohen* v. *Tannar*, [1900] 2 Q. B. 609; *Browne* v. *Flower*, [1911] 1 Ch. 219; *Malzy* v. *Eichholz*, [1916] 2 K. B. 308; *Phelps* v. *City of London Corporation*, [1916] 2 Ch. 255; see also *Davis* v. *Town, &c., Corpn., Ltd.*, [1903] 1 Ch. 797; *Markham* v. *Paget*, [1908] 1 Ch. 697; *Harmer* v. *Jumbil (Nigeria) Tin Area, Ltd.*, [1921] 1 Ch. 200; *Booth* v. *Thomas*, 95 L. J. Ch. 160. Building on adjacent land so as to cause tenant's chimney to smoke is a breach: *Tebb* v. *Cave*, [1900] 1 Ch. 642. As to who are "persons claiming under" the covenantor, see *David* v. *Sabin*, [1893] 1 Ch. 523; *Kelly* v. *Rogers*, [1892] 1 Q. B. 910; *Williams* v. *Gabriel*, [1906] 1 K. B. 155; *Re Griffiths*, 61 Sol. J. 268; [1917] W. N. 51. The benefit of this covenant runs with the land and the burden with the reversion: *Manchester, &c., Rly.* v. *Anderson*, [1898] 2 Ch. 394. See also L. P. Act, 1925, ss. 78, 79, 142.

(*b*) It seems that this does not make the payment of rent, &c., a condition precedent: *Edge* v. *Boileau*, 16 Q. B. D. 117; but see *Bastin* v. *Bidwell*, 18 Ch. D. 238; where the covenant was for renewal of the lease.

As to implying covenants for title.

(*c*) Covenants for title, &c., cannot be implied in a lease by making the lessor demise as "beneficial owner" or as "trustee," &c.; see L. P. Act, 1925, s. 76 (5); but the statutory covenants may be incorporated in the manner shown, *ante*, p. 511. Probably a covenant for quiet enjoyment is implied from the mere relationship of landlord and tenant: Norton on Deeds, 499; *Markham* v. *Paget*, [1908] 1 Ch. 698; but such a covenant will not extend to the acts of persons not claiming under the lessor: *Baynes* v. *Lloyd*, [1895] 2 Q. B. 610; *Jones* v. *Lavington*, [1903] 1 K. B. 253; or to the unlawful acts of persons claiming under him. As to the covenant implied by the word "demise," or "let," see Elph. Introd., 7th ed., 346; Norton on Deeds, 499. If several houses are demised by one lease at separate rents, say, "sevl yrly rents hby reserved," "sevl covts, &c., in respt of each of the sd messes & premes resply," "the sd sevl premes."

12. That the lessors have not done or knowingly omitted or suffered or been party or privy to anything whereby they are prevented from demisg the premes or any pt throf in mner afsd. Covenant by trustees against incumbrances (*d*).

13. And also that if the lessee shl be desirous of renewg this present lease for the further term of —— yrs & of such his desire shl before the expiration of the term hrby grted give —— calendar months previous notice in writg to the lessor or leave the same at or send the same by registered letter to his usual or last-known place of abode in England (*e*) then the lessor will (at the cost of the lessee (*f*)) use his best endeavours to procure from the superior landlord (*g*) of the sd premes hby Covenant in underlease for renewal on payment of a fine (*h*).

(*d*) Where a trustee, executor or mortgagee grants a lease without the concurrence of any other person willing to covenant, he often gives the covenant for quiet enjoyment, as the liability under it is not very onerous; but it is conceived that in strictness a trustee, executor, or mortgagee cannot be compelled, even where the lease is granted pursuant to a contract entered into by the settlor, testator, or mortgagor (see L. P. Act, 1925, s. 99, sub-s. 12), to enter into any covenant except that he has not encumbered: see *Worley* v. *Frampton*, 5 Hare, 560, and the cases there cited; Dart, 7th ed., 92; Elph. Introd., 7th ed., 348; Williams, V. & P., 3rd ed., 614. Covenant by trustees, &c.

Where an executor grants an underlease pursuant to his testator's contract, the covenant may be qualified by adding the words, "but not so as to incur any psonal liability except in respt of his own acts & defaults to an extent exceedg the assets of the sd testor wch may come to his hands," or "so as to bind the este of the sd testor but not so as to incur any further or other liability": see *ante*, p. 712, note (*a*).

As to the case where the executor is the lessee taking the lease pursuant to the testator's covenant, see *Stephens* v. *Hotham*, 1 K. & J. 571.

(*e*) In any lease executed after 1925, "month" means calendar month unless the context otherwise requires; L. P. Act, 1925, s. 61, see *Phipps & Co., &c., Ltd.* v. *Rogers*, [1924] 2 K. B. 45; and, unless a contrary intention appears, the provisions of s. 196 of the same Act as to the mode of serving notices will apply.

(*f*) As to the costs payable by the lessee, see *Fitzsimmons* v. *Lord Mostyn*, [1904] A. C. 46; *Re Baylis*, [1907] 2 Ch. 54.

(*g*) If the superior landlord is not the immediate landlord of the lessor this covenant is not strictly a covenant for renewal: *Muller* v. *Trafford*, [1901] 1 Ch. 54. In that case say "from the pson or psons for the time being entitled to the reversion immedly expectant on the term now vested in the lessor." As to covenants for renewal

(*h*) Attention may here be directed to the provisions of the L. P. Act, 1922, s. 145, and of the Fifteenth Schedule to that Act which convert *perpetually* renewable terms & sub-terms into terms of 2,000 years and

demised [psuant to the covt in that behalf contained in the superior lease,] a new lease of the sd premes, & that thrupon & when the sd superior landlord shl grt & execute to the lessor such new lease as afsd, the lessor will within —— days next after he shl obtain such new lease at the request & cost of the lessee, execute to him a new lease of the sd premes at & under the same rent, & containg the like (*b*) covts, provons, condons, & agrmts, other than this psnt covt (*c*), as are in & by these psnts reserved & contained, by way of renewal for the further term of —— yrs to be computed from the end of the first —— yrs of the term hby grted, the lessee payg for such

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prohibit the future creation of *perpetually* renewable leaseholds: see also Fifteenth Schedule to that Act, s. 7 (2). It should be remembered here with regard to dwelling houses to which the Increase of Rent, &c. (Restrictions) Act, 1920, applies, that s. 8 of that Act prohibits the payment of any fine where the renewed lease is for a term less than 14 years; see Rent and Mortgage Interest, &c. Act, 1923, s. 2 (2), and note, *post*, p. 835 *et seq.* It seems that a covenant for renewal may be validly entered into under a power requiring the best rent to be reserved, provided the rent continues to be the best rent at the time of the renewal (which if the lessee lays out money in building or improvements would not be likely); and although the power only authorises leases taking effect in possession within a limited time: *Gas Light & Coke Co.* v. *Towse*, 35 Ch. D. 519. This seems to apply not only to the ordinary express power, but to the leasing powers conferred on a tenant for life by the S. L. Act, 1925, ss. 41 to 43. As to a contract to grant a lease, see S. L. Act, 1925, s. 90. The view taken in the case above cited was that, although a lease *in futuro* is prohibited by the power, a contract to grant a lease *in futuro* is good provided the lease is in conformity with the power when the time for granting it arrives; but this is opposed to *Re Farnell, sup.* The question was raised, but not decided, in *Re Lander & Bagley*, [1892] 3 Ch. 41, whether there is any difference between a lease for a term with an option to renew for a further term, and a lease for the whole period, with an option to determine at the end of the first term. The Courts lean against construing a covenant to be for a perpetual renewal, unless it is clear that the covenant does so provide: *Gray* v. *Spyer*, [1921] 2 Ch. 549, 561; reversed, [1922] 2 Ch. 22. A covenant for renewal is not void for perpetuity: *L. & S. W. Rly. Co.* v. *Gomm*, 20 Ch. D., at p. 579; *Hare* v. *Burges*, 4 K. & J. 45; 6 Vin. Abr. 389, pl. 6; Challis, R. P. 3rd ed., 186; *Woodall* v. *Clifton*, [1905] 2 Ch., at p. 264. As to renewal by a trustee or one of several persons beneficially interested in the lease, see *Keech* v. *Sandford*, 2 White & Tudor L. C., 8th ed., 706; *Ex p. Grace*, 1 Bos. & P. 376; *Re Biss*, [1903] 2 Ch. 40; and see 47 Sol. J. 650. As to the procedure where the covenantee is out of the jurisdiction, see 11 Geo. 4 & 1 Will. 4, c. 65, s. 18. See further as to covenants for renewal, Foa, 6th ed., 355.

in leases under powers.

(*b*) See *Hollies Stores* v. *Timmis*, [1921] 2 Ch. 202.

(*c*) See *Swinburne* v. *Milburn*, 9 App. Cas. 844; *Wynn* v. *Conway Corpn.*, [1914] 2 Ch. 705; L. P. Act, 1922, s. 5.

renewal at the time of the execution of the renewed lease unto the lessor, the sum of £—— being —— yrs' clear ground rent, by way of fine, togr with all arrears of rent, & executg a counterpt of every such renewed lease.

PROVISOES.

Power of re-entry (*d*).

1. PROVD ALWAYS & these psnts are upon this condon, that if the sd yrly rent hby reserved [yrly or other rents hby reserved

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Relief against forfeiture.

(*d*) A power of re-entry (discussed 41 Sol. J. 735, 42 *ib.* 502; Fawcett, L. & T., 3rd ed., 168; Foa, 6th ed., 366) contained in a lease is not objectionable on the ground of remoteness, whatever is the length of the lease. It is a legal interest (see L. P, Act, 1925, s 1 (2)) which is equally valid whether it is absolute or contingent. The power of the Court to relieve against forfeiture under a power of re-entry in a lease has been extended by the L. P. Act, 1925, s. 146, to all cases except (sub-s. 8 (i)) a covenant or condition against assigning or underletting, etc. before 1926 (see *ante*, p. 806, note (*k*)); or (ii) in the case of a mining lease, a covenant or condition for allowing the lessor to inspect the books, weighing-machines, &c., or the workings; or (sub-s. 9) a condition for forfeiture or bankruptcy in certain leases therein mentioned: see *Ex p. Gould*, 13 Q. B. D. 454; *C. S. Co-op. Soc., Ltd.* v. *McGrigor*, [1923] 2 Ch. 347; or on taking the lessee's interest in execution (but see *Horsey Estate, Ltd.* v. *Sleiger*, [1899] 2 Q. B. 79); by sub-s. 10 where the forfeiture condition is contained in any lease other than those mentioned in sub-s. 9, if the lessee's interest is sold within a year from the bankruptcy or taking into execution the section applies, or if the lessee's interest is not so sold the section only applies during the first year from the bankruptcy or taking into execution; the lessor being precluded (sub-s 1) from enforcing the forfeiture, unless the lessee fails, within a reasonable time after notice (which must give such details as show what is complained of: *Fletcher* v. *Nokes*, [1897] 1 Ch. 271; and see *Re Serle*, [1898] 1 Ch. 652; *Piggott* v. *Middlesex C. C.*, [1909] 1 Ch. 134; *Fox* v. *Jolly*, [1916] 1 A. C. 1) served on him by the lessor, to remedy the breach, if capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor, and (sub-s. 2) the Court can give relief on such terms as it thinks fit. As to the discretion of the Court in granting relief, see *Hyman* v. *Rose*, [1912] A. C. 623. This enactment did not apply to an agreement for a lease, unless possibly a right to specific performance could be shown: *Swain* v. *Ayres*, 21 Q. B. D. 289; *Strong* v. *Stringer*, 61 L. T. 470 (see Hood & Challis, 7th ed., 65); but see now the definition of "lease" and "underlease" in the L. P. Act, 1925, s. 146 (5) (*a*) (*b*). An under-lessee of part of demised premises could not obtain relief under s. 14 of the C. Act, 1881, against forfeiture for breach of a covenant contained in the head-lease: *Burt* v. *Gray*, [1891] 2 Q. B. 98; but the Court may, under the L. P. Act.

or any of them], or any pt throf, shl at any time be in arrear & unpaid for twenty-one days after the same shl have become

1925, s. 146 (4), grant him relief in such a case by an order vesting in him the whole term of the head-lease or any less term: *Highgate School* v. *Sewell*, [1894] 2 Q. B. 906; see also *Imray* v. *Oakshette*, [1897] 2 Q. B. 218; *Fryer* v. *Ewart*, [1902] A. C. 187; *Hurd* v. *Whaley*, [1918] 1 K. B. 448. As to who are underlessees within the section, see *Jarrott* v. *Ackerley*, 85 L. J. Ch. 135.

As to equitable relief against forfeiture, see *Barrow* v. *Isaacs*, [1891] 1 Q. B. 417; *Eastern Telegraph Co.* v. *Dent*, [1899] 1 Q. B. 835; *Gray* v. *Bonsall*, [1904] 1 K. B. 601; *Humphreys* v. *Morten*, [1905] 1 Ch. 739; *Matthews* v. *Smallwood*, [1910] 1 Ch. 777; *Davenport* v. *Smith*, [1921] 2 Ch. 270; *Atkin* v. *Rose*, [1923] 1 Ch. 522; *Fuller's Theatre Co., Ltd., & Rofe*, [1923] A. C. 435; *Abrahams* v. *MacFisheries, Ltd.*, [1925] 2 K. B. 18.

Where the reversion has been severed a right of re-entry by virtue of L. P. Act, 1925, s. 140 (2), includes a right to determine the lease by notice to quit or otherwise.

The power of re-entry for non-payment of rent is sometimes expressed to arise if the rent is in arrear, &c., "and no sufficient distress can be had or levied for the same," &c. As to the wording in that case, see *Shepherd* v. *Berger*, [1891] 1 Q. B. 597.

Frame of power of re-entry.

As to the power of re-entry extending to the bankruptcy, &c., of the lessee, see *Hodgkinson* v. *Crowe*, L. R. 19 Eq. 591. It was stated in that case, on appeal (L. R. 10 Ch. 622), that under an agreement for a lease to contain the usual covenants, &c., a proviso for re-entry in the lease should extend only to non-payment of rent, and not to breach of any other covenants. This was followed in *Re Anderton*, 45 Ch. D. 476, where Chitty, J., held that s. 14 of the C. Act, 1881, had not altered the law on the subject, but suggested that a practice of extending the power to breach of any covenant might in process of time arise. The power, so extended, is inserted in probably 99 out of every 100 leases, whether for occupation or building, or otherwise; and any objection to its insertion is much lessened by the powers now possessed by the Court of relieving against forfeiture, see 37 Sol. J. 111. where the subject is discussed. As to the importance of extending the proviso to the breach of negative covenants, see *Hyde* v. *Warden*, 3 Ex. D. 72; *Evans* v. *Davis*, 10 Ch. D. 747; *West* v. *Dobb*, L. R. 5 Q. B. 460; and as to what words are sufficient for that purpose, see *Harman* v. *Ainslie*, [1904] 1 K. B. 698, where the cases are discussed. A power of re-entry on the bankruptcy of the lessee, his executors, administrators, or assigns, does not apply where the lessee has assigned the lease before his bankruptcy: *Smith* v. *Gronow*, [1891] 2 Q. B. 394.

Notice.

Notice under the L. P. Act, 1925, s. 146 (see for forms Vol. 2, p. 320), must be given before the lessor can obtain possession under the power of re-entry either peaceably or by action: *Re Riggs*, [1901] 2 K. B. 16; but a writ claiming possession of the land is equivalent to notice: see *Moore* v. *Ullcoats Mining Co., Ltd.*, [1908] 1 Ch. 575; and forfeiture is not waived by the demand for & acceptance of rent accrued due partly after the bankruptcy and partly after the issue of the writ: *C. S. Co-op. Society, Ltd.* v. *McGrigor*, [1923] 2 Ch. 347; and where mesne profits are claimed, they

due (whether any formal or legal (*a*) demand throf shl have been made or not), or if the lessee shl at any time fail or neglect to pform or observe any of the covts, condons, or agrmts hrin contained & on his pt to be pformed & observed, [or if the lessee, while the sd demised premes or any pt throf shl remain vested in him (*b*), shl become subjt to the bkcy laws, or make any arrangemt or composition with his credors, or permit any execution to be levied on the demised premes, or if the assns of the lessee being a Co shl enter into liquidation whether compulsory or voluntary, [not being merely a voluntary liquidation for the ppose of amalgamon or reconstruction] (*c*),] then & in any such case it shl be lawful for the lessor, or any pson or psons duly authorised by him in that behalf into or upon the sd hby demised premes, or any pt throf in the name of the whole, to re-enter (*d*), & the sd premes peaceably to hold & enjoy thenceforth, as if these psnts had not been made, witht prejudce to any right of action or remedy

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are assessable, from the date of the writ in the action and not from the date of the breach of covenant: *Elliott* v. *Boynton*, [1924] 1 Ch. 236. A mortgagor in possession can take advantage of the power in the case of a lease granted by him either before the mortgage or after the mortgage under the statutory power in that behalf: L. P. Act, 1925, s. 141 (2); see *Turner* v. *Walsh*, [1909] 2 K. B. 484. A landlord may enter without notice at the end of the term whether it determines by expiration of time: *Taunton* v. *Costar*, 7 Term R. 431; or by notice: *Turner* v. *Meymott*, 1 Bing. 158; and if the premises are unoccupied, he may break them open for this purpose: *Turner* v. *Meymott*, *sup.*

As to restrictions on recovery of possession under the Increase of Rent, &c., Act, 1920, see p. 841, *post.*

The variations required for a lease to a company can readily be made from this form; see *post*, p. 1005.

(*a*) As to the meaning of "legal demand," see Stroud, 2nd ed., 1067; and as to the inconveniences of being obliged to resort to a legal demand for rent, Foa, 6th ed., 738 *et seq.*; Woodfall, 21st ed., 397.

(*b*) See *Smith* v. *Gronow*, [1891] 2 Q. B. 394.

(*c*) See *General Share, &c., Co.* v. *Wetley, &c., Co.*, 20 Ch. D. 260; *Horsey Estate, Ltd.* v. *Steiger, &c., Ltd.*, [1899] 2 Q. B. 79; *Fryer* v. *Ewart*, [1902] A. C. 187; *Hastings Corpn.* v. *Letton*, [1908] 1 K. B. 378.

(*d*) The words often inserted authorising the lessor to effect a forcible entry and eject the lessee are omitted, as such an authority cannot lawfully be given: see 5 Ric. 2, stat. 1, c. 8; *Edwick* v. *Hawkes*, 18 Ch. D. at p. 211. This case, so far as it followed *Beddall* v. *Maitland*, 17 Ch. D. 174, in holding that even after peaceable entry it is illegal to eject a trespasser by violence, has been overruled: *Hemmings* v. *Stoke Poges Golf Club*, [1920] 1 K. B. 720. As to the liability for removal of the roof, see *Jones* v. *Foley*, [1891], 1 Q. B. 730. As to authorising a forcible entry.

of the lessor, in respt of any antecedent breach of any of the covts by the lessee hrinbfe contd.

The same. Short form.

2. PROVD ALWAYS that if the rent hby reserved, or any pt throf, shl be in arrear for twenty-one days after the same shl become due (whether demanded or not), or in the event of any breach of any of the covts & agrmts on the pt of the tenant hrin contained, or of his becomg subjt to the bkcy laws, or makg any composition or arrangemt with his credors, the landlord may re-enter upon the sd demised premes (*e*).

Proviso to follow power of re-entry in lease of several houses at separate rents.

3. PROVD ALSO & it is hby agrd, that the non-paymt of the rent hby reserved, or the breach of any of the covts or condons hrin contained in respt of any one of the sd messes, shl not authorise the re-entry of the lessor into or upon the others of the sd messes, or any of them, but only into or upon the parlar messe in respt whrof such breach shl have happened, it being the intention that each of the sd messes hby demised shl be held durg the sd term hby grted separately from & independently of the others throf, & shl not be affected by any non-paymt of rent or breach of any covt or condon in respt of any others or other of the sd messes.

Proviso excluding liability of lessee after assignment (*a*).

4. PROVD ALWAYS & it is hby agrd that the lessee, his exs & ads, shl not be liable to the paymt of the rent hby reserved, or to the pformce of any of the covts or condons hrinbfe contd any longer than he or they shl continue to hold this psnt ease, if he or they shl have assned the same to some responsible pson or psons or Co, & notice in writg of such assnmt shl have been given to the lessor, to whom an attested copy throf shl also, if required, be supplied at the cost of the lessee, his exs or ads.

That rent shall be suspended in

5. PROVD THAT in case the sd messe, bldgs, & premes, or any pt throf, shl at any time be destroyed or so damaged by fire, explosion, or orwise as to be unfit for occupon or use [or shl

(*e*) The form might as an alternative provide that in the event specified, "the landlord may determine the tenancy hby created by givg to the tenant seven days' notice in writg to that effect, & may after the expiron of such notice resume posson of the premes & remove therefrom all ppty belongg to the tenant & re-let the same witht any process of law or further authority in that behalf."

(*a*) A clause of this kind is of course very exceptional.

at any time be condemned by any authority having jurisdiction for such ppose as a dangerous bldg & shl on that account be required to be pulled down], & shl not be re-built or reinstated by the lessor within three calr months after such destruction or damage [or the commencemt of such pulling down], then & in such case (unless the destruction or damage shl have been caused by fire & the insce of the premes shl have been forfeited by the act or default of the lessee) the rents hby reserved, or a fair & just proportion throf, accordg to the nature & extent of the damage sustained, shl from & after the expiron of such three months, & until the premes shl have been rebuilt or reinstated & made fit for occupon or use, be suspended & cease to be payable, & in case of dispute as to the proportion or period of such abatemt the same shl be referred to arbitron psuant to the provon in that behalf hrinar contained, such abatemt to be in full satisfon for all claim for damages by the lessee against the lessor (*b*).

case of fire in default of lessor rebuilding.

6. PROVD ALWAYS & it is hby agrd that if any pt of the sd

Power of distress (*c*).

(*b*) That in the absence of such a provision the tenant would be liable for the rent, see *Manchester, &c., Co., Ltd.* v. *Carr*, 5 C. P. D. 507; *Matthey* v. *Curling*, [1922] 2 A. C. 180. Power is sometimes given to one or both parties to determine the lease in case of total destruction; the following may be added for this purpose: "Provd always that in case the sd messe, bldgs & premes shl be destroyed by fire or orwise as afsd so as to be wholly unfit for occupon or use, this psnt lease may at the option of either the lessor or lessee (such option to be declared in writg within —— days after such destron) be determined, the lessee in that event payg the rent hby reserved up to such determinon."

Power to determine lease in case of total destruction.

(*c*) A power of distress given by way of indemnity against a rent or any part thereof payable in respect of any land (which includes incorporeal hereditaments) is not affected by the Bills of Sale Acts: see L. P. Act, 1925, s. 189; and *Re Roundwood Colliery Co.*, [1897] 1 Ch. at p. 391. Payments reserved as rent for goods (*Spencer's Case*, 5 Co. Rep. at p. 17a) are not, strictly speaking, rent; and therefore a power of distress for them is invalid under the Bills of Sale Act, 1878, s. 6. Where, however, one entire rent is reserved both for land and goods, it issues out of the land solely, and a power of distress to recover it is valid: *Spencer's Case, sup.*; *Farewell* v. *Dickenson*, 6 B. & C. 251. As to the effect of the land and goods passing to different persons, see *Salmon* v. *Matthews*, 8 M. & W. 827.

Distress.

Sometimes the common law power of distress is extended by providing:—" that the power of the lessor to distrain upon the sd demised premes for rent in arrear shl extend to & include any

Extension of power of distress.

rent shl be in arrear for twenty-one days (whether legally demanded or not) it shl be lawful for the lessor into & upon tenant's fixtures or fittgs not orwise by law distrainable wch may from time to time be thron." See 1 Smith's L. C., 12th ed., 493 *et seq.* As to the statutory restrictions on the right of distress, see the Law of Distress Amendment Acts, 1888, 1895, and 1908; *Gonsky* v. *Durell*, [1918] 2 K. B. 71; and as to companies in liquidation, see the Companies C. Act, 1908, s. 209 (4). As to agricultural holdings, see Agricultural Holdings Act, 1923, ss. 34—37; *London, &c., Bank* v. *Belton*, 15 Q. B. D. 457; *Ex. p. Bull*, 18 Q. B. D. 642; *Masters* v. *Green*, 20 Q. B. D. 807; and generally see *Perring & Co.* v. *Emerson*, [1906] 1 K. B. 1; *Lavell* v. *Ritchings*, *ib.* 480; *Addison* v. *Shepherd*, [1908] 2 K. B. 118.

The bankruptcy of the tenant does not prevent a distress for rent by the landlord, but under a distress after the commencement of the bankruptcy the landlord cannot recover more than six months' rent accrued prior to adjudication: Bankruptcy Act, 1914, s. 35; and see *Re Griffith*, 66 L. J. Q. B. 763. As to the apportionment of a quarterly rent, see *Re Howell*, [1895] 1 Q. B. 844. A tenant's goods seized by the sheriff under a writ of execution cannot be distrained on for rent; but the Act 8 Anne, c. 14, s. 1, prohibits the removal of the goods seized until the rent in arrear (not exceeding one year's rent) has been paid by the execution creditor; but this only applies if the tenancy is still subsisting, see *Cox* v. *Leigh*, L. R. 9 Q. B. 333; *Lewis* v. *Davies*, [1914] 2 K. B. 469. As to the measure of damages against the sheriff for wrongful removal, see *Thomas* v. *Mirehouse*, 19 Q. B. D. 563. It is the practice for the sheriff on receiving notice of the landlord's claim to proceed with the sale and to pay the landlord out of the proceeds. The rights of the landlord under the Act of Anne are not interfered with by the tenant's bankruptcy, except in the case where the execution itself is rendered void by the bankruptcy: see *Re Mackenzie*, [1899] 2 Q. B. 566; *Re Craig*, [1916] 2 K. B. 497; *Re British Salicylates*, [1919] 2 Ch. 155; and except that, unless notice of a claim for rent due has been served on the officer levying the execution before the bankruptcy, the execution creditor is only liable to pay six months' rent in arrear instead of one year's: Bankruptcy Act, 1914, s. 35 (2).

As to distress where a tenant holds over after the determination of a lease, see the Act of Anne, ss. 1, 6, 7, and *Lewis* v. *Davies*, [1914] 2 K. B. 469.

Where a receiver is appointed by a mortgagee under the L. P. Act, 1925, s. 101, and notice of his appointment is given to the tenant holding under a lease granted by the mortgagor while in possession, the latter cannot distrain for rent, except possibly with the authority of the receiver: *Woolston* v. *Ross*, [1900] 1 Ch. 788.

Company. No distress can be levied against a company incorporated under the Companies C. Act, 1908, which is being wound up by or under the supervision of the Court; see ss. 142, 211; but see *Re British Salicylates*, [1919] 2 Ch. 155.

Exemptions. As to what things are exempt from distress, see Foa, 6th ed., 550; *Simpson* v. *Hartopp*, 1 Smith's L. C., 12th ed., 493; and, as to the goods of an under tenant or lodger, see the Law of Distress Amendment Act, 1908; *Gonsky* v. *Durell*, [1918] 2 K. B. 71; Woodfall, L. & T., 21st ed., 554. As to distress on goods comprised in a hire-purchase agreement, see

the sd —— & premes or any pt throf to enter & distrain, & the distress or distresses then & there found to dispose of in due course of law (*a*), & to apply the produce throf in or towards paymt of the sd yrly rent of £—— so in arrear, & all costs, charges, & expses occasd by the non-paymt throf.

Clause enabling under-lessee to pay rent to superior landlord.

7. PROVD ALWAYS & it is hby agrd that it shl be lawful for the lessee to pay the rent hby reserved to the superior landlord, whose receipts for such yrly rent when produced & delivered up to the lessor shl be in full satisfon & discharge of so much of the rent hby reserved as in such receipts shl be expressed to be reced by the superior landlord.

Apportionment of rent in case of assignment of part of the premises.

8. AND IT IS HBY AGRD that if & so often as the lessee (includg any pson in favour of whom an apportionmt of rent shl then already have been made under this provon his or their exs, ads, & assns) shl at any time or times during the sd term assn at an apportioned rent any one or more of the messes or tenemts so to be erected on the land hby demised (not being the whole then vested in him) & shl produce such assnmt & these psnts to & shl leave a copy of such assnmt with the solors to the lessor, such solicitors shl, on receivg a fee of £1 1*s*., endorse on the assnmt & these psnts a memo confirmg the apportionmt of the rent, & from & after the endorsemt of such memo the premes comprised in such assnmt shl be subjt only to the paymt of the rent apportioned in respt throf, & to the pformce & observce of the covts & condons hrin contained, & on the pt of the lessee to be pformed & observed so far only as the same shl be applicable to the last mentd premes in the same mner as if a separate lease of the same premes had been grted to the assnee at & under such apportioned rent, covts & condons, so far as the same shl be applicable as afsd

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Rogers v. *Martin*, [1911] 1 K. B. 19; *Hackney Furnishing Co.* v. *Watts*, [1912] 3 K. B. 225; *Jay's Furnishing Co.* v. *Brand, &c.*, [1914] 2 K. B. 132; affd., [1915] 1 K. B. 458.

As to protection against distress in cases of illness, see National Insurance Act, 1911, s. 68.

As to the restriction on distress under the Increase of Rent, &c., Act, 1920, see p. 842, *post*.

(*a*) The landlord cannot sell the goods to himself: *Moore, Nettlefold, & Co.* v. *Singer & Co.*, [1904] 1 K. B. 820; and see *Plasycoed Collieries Co.* v. *Partridge, Jones & Co.*, [1912] 2 K. B. 345.

resply, & the lessee making such assnmt as afsd shl hold the premes retained by him subjt only to the paymt of the residue of the rent payable in respt of the premes vested in him immedly bfe such assnmt as afsd, & to the pformce & observce of the covts & condons thrin contained, & on the pt of the lessee to be pformed & observed so far as the same shl be applicable to the premes retained by him : PROVD ALSO & it is hby agrd & declared that no apportioned rent shl in any case be less than the sum of £2 or greater than one fifth pt of the rack rent value of the land in respt whrof the same shl be apportioned & the bldgs erected thron when finished & fit for habitation, & that until all the sd messes or dwelling-houses & tenemts hrinbfe covted to be erected shl be completed & rendered fit for habitation the lessee shl only be entitled to apportionmt in respt of such messes or tenemts as shl be so completed & rendered fit for habitation.

Power to lessee to determine lease (*b*).

9. PROVD ALWAYS & it is hby agrd that if the lessee shl be desirous of determing this psnt lease at the expiron of the first —— or —— yrs of the term hby grted, & of such his desire shl give —— calr months' previous notice in writg to the lessor, or leave the same at or send the same by registered letter to his usual or last known place of abode in England (*c*), [& shl pay all the rent & pform & observe all the covts hrinbfe reserved & contained, & on the pt of the lessee to be

(*b*) This may be inserted under an ordinary leasing power : *Edwards* v. *Millbank*, 4 Drew. 606 ; and see *Re Lander & Bagley*, [1892] 3 Ch. 41, *ante*, p. 815, note (*h*). Where there are more lessees than one they must all concur in the notice, see *Re Viola*, [1909] 1 Ch. 244. The notice to be valid must be given by or on behalf of the person in whom the legal estate in the term is vested : *Stait* v. *Fenner*, [1912] 2 Ch. 504 ; or his agents, *In re Knight & Hubbard's underlease*, [1923] 1 Ch. 130. A lessee who has executed an underlease cannot determine the lease by notice without the concurrence of the underlessee : *Phipos* v. *Callegari*, 54 Sol. J. 635. If the lease is of agricultural land, a twelve months' notice will be necessary by virtue of s. 25 of the Agricultural Holdings Act, 1923 : see *Edell* v. *Dulien*, [1924] A. C. 38.

As to the construction of a proviso to determine after the expiration of the first three years of the term on giving six calendar months' previous notice in writing, such notice to determine on any quarter day, see *Re Lancashire & Yorkshire Bank*, [1914] 1 Ch. 522.

A power enabling the lessee's executors to determine the lease at the end of three months from his death is sometimes desirable.

(*c*) As to the meaning of "month," and as to the statutory provisions relating to the service of notice, see *ante*, p. 815, note (*e*).

pd, pformed & observed up to such determinon (*a*)], then & in such case, immedly after the expiron of the sd term of —— or —— yrs, as the case may be, this psnt lease & everythg hrin contained shl cease & be void witht prejudice (*b*) to any claim by the lessee against the lessor in respt of any antecedent breach of any covt or condon hrin contained.

10. PROVD ALWAYS & it is hby agrd that the lessee shl not be entitled to any right of light or air wch will interfere with the free use of any land adjoing, opposite, or near to, the premes hby demised for bldg or other pposes. Right of light.

11. PROVD ALWAYS & it is hby agrd that if the lessor shl be desirous of determing this psnt lease at the expiron of the first —— or —— yrs of the term hby grted, & of such his desire shl give —— calr months' previous notice in writg to the lessee, or leave the same for him on any pt of the demised premes (*d*), then & in such case, immedly after the expiron of the first —— or —— yrs of the term hby grted, as the case may be, this psnt lease & everythg hrin contained shl cease & be void witht prejudice (*b*) to any claim by either party against the other in respt of any antecedent breach of any covt or condon hrin contained. Power to lessor to determine lease (*c*).

12. PROVD ALWAYS & it is hby agrd that, &c., *continue as in* f. **9** *down to* "determinon," or if the lessor, &c., *continue as in* f. **11** *down to* "the demised premes," then & in either of the sd cases immedly after the expiron of the sd term of —— yrs or —— yrs, as the case may be, this psnt demise & everythg hrin contained shl cease & be void, but witht prejudice (*b*), Power to either lessor or lessee to determine lease.

(*a*) See *Grey* v. *Friar*, 4 H. L. Cas. 565. These conditions are conditions precedent and if not performed the notice is ineffectual: *Stait* v. *Fenner*, [1912] 2 Ch. 504; *Burch* v. *Farrow's Bank*, [1917] 1 Ch. 606.

(*b*) The words "without prejudice" to the end of the clause will be inserted if there are any covenants by the lessor other than for quiet enjoyment. If the proviso is expressed to be "without prejudice to the remedies of either party against the other," the above conditions as to payment of rent and performance of covenants are none the less conditions precedent to giving the notice: *Burch* v. *Farrow's Bank*, *sup.* It was stated in *Stait* v. *Fenner*, *sup.*, at p. 513, that in the absence of a provision of this kind the determination of the term at the expiration of the notice absolutely puts an end to all rights of action in respect of anything contained in the lease on the part of either party; but see *Blore* v. *Guilini*, [1903] 1 K. B. 356.

(*c*) See *Re Knight & Hubbard's Underlease*, [1923] 1 Ch. 130; and as to agricultural land, see *Edell* v. *Dulien*, [1924] A. C. 38.

(*d*) See *ante*, p. 815, note (*e*).

if these psnts shl be determined by notice on the pt of the lessee, to any claim by the lessee, &c., *as in* f. **9**, & if these psnts shl be determined by notice on the pt of the lessor to any claim by either party, &c., *as in* f. **11**.

The same. Short form.

13. PROVD ALWAYS that the tenancy hby created shl be determinable at the end of the first —— or —— yrs [at any time] by either party on givg to the other party —— calr months' previous notice in writg [expirg at any period of the yr].

Power to lessor to purchase machinery at end of lease (*e*).

14. PROVD ALWAYS & it is hby agrd that the lessor shl be entitled, on givg written notice of his intention in that behalf to the lessee at least one calr month bfe the determinon of this psnt demise, or within one week after the determinon throf by re-entry, to pchase from the lessee any addonal machinery, or effects of the nature of the machinery or effects described in the schdle hto, [or buildings] (*f*) wch may durg this demise be put up or erected in or upon the sd premes by the lessee, at a valuon, to be made by two psons, one to be appted by each party or their umpire. And in case the lessor shl not so agree to pchase the same, it shl be lawful for the lessee to remove the same at the expiron of this demise, or within a reasble time thrafter (*g*).

Power to lessee to purchase the freehold (*h*).

15. PROVD ALWAYS & it is hby agrd that if the lessee shl bfe the —— day of —— give to the lessor, or leave at his last known place of abode in England six calr months' notice in

(*e*) See also *post*, LEASES, MINING. As to the rights in respect of fixtures in case of the tenant's bankruptcy, see *Ex p. Gould*, 13 Q. B. D. 454; *Re Moser, ib.* 738; Bankruptcy Act, 1914, s. 54 (3).

(*f*) *Hallen* v. *Spoeth*, [1923] A. C. 684.

(*g*) As to the right of a lessee to remove fixtures belonging to him after giving up possession, see Woodfall, L. & T., 21st ed., 805; Foa, 6th ed., 765 *et seq.*

As to option of purchase.

(*h*) An option to purchase cannot be exercised after specific performance of the contract to purchase has become impossible: *Edwards* v. *West*, 7 Ch. D. 858. As to the former rule relating to the devolution of the benefit of an option after the death of the lessee, see *Re Adams*, 27 Ch. D. 394; and as to the former rule relating to the devolution of the purchase-money upon the exercise of an option after the death of the lessor, see *Re Marley*, [1915] 2 Ch. 264; *Re Blake*, [1917] 1 Ch. 18; *Lawes* v. *Bennett*, 1 Cox, 167; *Re Isaacs*, [1894] 3 Ch. 506; *Re Pyle*, [1895] 1 Ch. 724. An equitable assign of the lessee is not entitled to the benefit of the option: *Friary, &c., Breweries, Ltd.* v. *Singleton*, [1899] 2 Ch. 261. An option to purchase the freehold, though contained in a lease, is an independent contract (*Sherwood* v. *Tucker*, [1924] 2 Ch. 440), and is not one of the terms of the tenancy within the I. of Rent and M. I. (Restrictions) Act, 1920, s. 15, and cannot,

writg (*a*) of the desire of the lessee to pchase the fee simple of the premes hby demised, then the lessor shl, on the expiron of such notice, & upon paymt of the sum of £——, togr with intt thron at the rate of £—— p.c. p.a. from the expiron of such notice till the complon of the pchase, & of all rent hby reserved up to such expiron, assure the sd premes unto the lessee for an este in fee simple in posson, free from incumbces, except, &c. (*b*). Provd also that the title of the lessor to the premes havg been already investigated & approved of by the lessee shl be deemed to be accepted by him up to the date of these psnts (*c*), [*or*, "Provd also that the title of the lessor to the premes shl not be investigated prior to but shl be deemed to

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therefore, be exercised by a lessee who continues in possession as a tenant from year to year after the expiration of the lease: *Re Leeds & Batley Breweries*, [1920] 2 Ch. 548; *McIlroy (William), Ltd.* v. *Clements*, 67 S. J. 402 (C. A.); W. N., [1923] 149; these decisions are not overruled by that in *Batchelor* v. *Murphy*, [1925] 1 Ch. 220, which turned upon the construction of a particular agreement. The option of purchase does not make the lease liable to any extra stamp duty: *Worthington* v. *Warrington*, 5 C. B. 635. Unless it is so provided, a breach of covenant by the lessee does not destroy his option: *Raffety* v. *Schofield*, [1897] 1 Ch. 937.

Power of limited owners to give.

Subject to certain restrictions, a tenant for life has power, under the S. L. Act, 1925, s. 51, to grant an option to purchase or take a lease of settled land; and trustees for sale, by L. P. Act, 1925, s. 28, and personal representatives during a minority or the subsistence of a life interest (A. of E. Act, 1925, s. 39) are invested with the like power: over-ruling *Oceanic, &c., Co.* v. *Sutherberry*, 16 Ch. D. 236.

(*a*) As to the notice, see *Riddell* v. *Durnford*, 37 Sol. J. 267; and as to its effect on the power of re-entry, see *Raffety* v. *Schofield*, [1897] 1 Ch. 937.

(*b*) As an option to purchase unrestricted as to time is void for perpetuity, *Woodall* v. *Clifton*, [1905] 2 Ch. 257, but not an option for a new lease of the same premises on new terms: *Rider* v. *Ford*, [1923] 1 Ch. 541; see also *Sherwood* v. *Tucker*, [1924] 2 Ch. 440; *Batchelor* v. *Murphy*, *sup.*, insert here when the term exceeds 21 years "PROVD ALWAYS that such notice shl expire not later than twenty-one yrs after the death of the survor of the issue now living of His late Majesty King Edward VII." Where the option is void for perpetuity, the covenantor may be liable in damages for not performing it: *Worthing Corpn.* v. *Heather*, [1906] 2 Ch. 532 (discussed 51 Sol. J. 648, 667); and see *S. E. Rly. Co.* v. *Associated Portland Cement Manufacturers* [1910] 1 Ch. 12. It may be advisable in some cases to provide that the lessee shall, as a condition precedent, have duly and punctually paid his rent; see *Starkey* v. *Barton*, [1909] 1 Ch. 284.

(*c*) In the absence of these words the lessee is entitled to investigate the title: *Welshman* v. *Spinks*, 5 L. T. 385; and therefore proper conditions must be inserted.

be approved of by the lessee up to the date of these psnts "]. [The lessee shl at his own cost execute & delr to the lessor a duplicate convce duly stamped. The convce shl contain [exceptions & reservons (other than the reservon of rent) similar to those hrinbfe contd] covts by the lessee with the lessor for the benefit of any pt of the —— Este, to pform & observe in perpetuity the covts hrinbfe contd & numbered ——, & also to indemnify the lessor, & his succors in title, against the burden of any similar covts already or prior to the complon of such convce to be entered into by the lessor with the pchaser of any pt of the —— Este, for the observce of such covts (so far as they ought to be observed) by the owner or owners for the time being of the demised premes], *or* [the convce shl be in the form given in the schdle hto with such variations as the deaths of pties & other circes may require (*d*).]

Provision as to notices to lessee or lessor (*e*).

16. PROVD ALWAYS & it is hby agrd that any demand of paymt or notice requirg to be made upon or given to the lessee shl be well & sufftly made or given if sent by the lessor [or by his agent for the time being] through the post by registered letter addressed to the lessee at the sd demised premes or left for him at the sd premes & that any notice requirg to be given to the lessor shl be well & sufftly given if sent by the lessee through the post by registered letter addressed to the lessor at his usual or last known place of abode or business or left for him at such place [or sent as afsd & addressed to the agent for the time being of the lessor at the Este Office, or left for him at the sd office]. And that any demand or notice sent by post in either case shl be assumed to have been delivered in the usual course of post.

Arbitration clause (*f*).

17. AND IT IS HBY DECLARED that if at any time hrafter any dispute, doubt, or question shl arise betn the lessor & the lessee, touchg the construction, meang, or effect of these psnts, or any clause or thing hrin contained, or their respective rights or liabilities under these psnts or orwise in relation to the

(*d*) The form referred to is Prec. LII., *ante*, p. 624. If the lessor dies before the conveyance, it may be necessary to recite the agreement for sale contained in the lease.

(*e*) The above general provision as to the manner in which notices are to be given may usually be omitted in reliance on the statutory provision. See L. P. Act, 1925, s. 196 (5).

(*f*) See *Printing Machinery Co.* v. *Linotype, Ltd.*, [1912] 1 Ch. 566, and Arbitration Act, 1889, and *ante*, p. 170.

premes, [or in case any valuon shl require to be made under the provons hrinbfe contd,] then every such dispute, doubt, question, [estimate, or valuon,] shl be referred to the arbitron or decision of two indifferent psons, one to be appted by each party, & these psnts shl be deemed to be a submission to arbitron within the Arbitron Act, 1889, or any statutory modifon or re-enactmt throf for the time being in force.

18. The lessor hby consents to the registron of the notice of this lease being entered on the Register under the heading District ——, Title No. ——, Ppty ——. Registration of notice of lease (*a*).

19. The costs & expses of & incidental to the preparon & execution of this agrmt & of the [every] lease & counterpt to be executed psuant thereto, [and of entry of notice of this agrmt on the Register] shl be pd by the lessee [& lessor in eql shares, *or*, " accordg to the scale charge "]. Costs of agreement, &c. (*b*).

Statement as to Value.

It is hby declared & certified that the transaction hby effected does not form pt of a larger transaction or of a series of transactions in respt of wch the amt or value or the aggregate amt or value of the conson other than rent exceeds the sum of £500. Statement under Rev. Act, 1911, s. 15 (*c*).

(*a*) See L. R. Act, 1925, s. 48, and L. R. R. 46. See further, *post*, p. 835.

(*b*) On taking a lease from several parties represented by several solicitors the lessee, in the absence of agreement, is liable for one set of costs only: *Re Fletcher & Dyson*, [1903] 2 Ch. 688.

(*c*) See *post*, p. 834, note.

PRECEDENTS.

PRELIMINARY NOTE.

Leasing powers of estate owners.

It may be convenient here to mention some powers of leasing possessed by estate owners in the various capacities in which the legal estate may become vested in them. The general effect of Part I of the L. P. Act, 1925, and of ss. 1 (7), 7 & 8 in particular, appears to be that a legal term of years cannot be granted by any person other than an estate owner or some person by that Act empowered to grant the same in the name and on behalf of the estate owner.

Settled land—where vested in tenant for life

As regards settled land, the S. L. Act, 1925, by ss. 41 to 48 confers wide powers of leasing upon the tenant for life as defined by s. 19, and upon other limited owners having the powers of a tenant for life by virtue of s. 20 of the Act, including among other persons (sub.-s (1) (ix) a person beneficially entitled to land for an estate in fee simple or for a term of years absolute subject to any estates, interests, charges or powers of charging subsisting or capable of being exercised under a settlement (see *Re Monckton*, [1917] 1 Ch. 224), and (x) a married woman entitled to land for an estate in fee simple or for a term of years absolute subject to a restraint on anticipation. The powers so conferred include a power to lease to the Forestry Commissioners for 999 years (see s. 48). As to building leases, see *post*, p. 876; and as to mining leases, see *post*, p. 1008. See also the S. L. Act, 1925, ss. 104, 107, 110, and the saving clauses (ss. 108, 109), as to the powers contained in the settlement.

—where vested in statutory owners

Where there is no tenant for life nor any person having the powers of a tenant for life under s. 20 of the Act, those powers are made exercisable (s. 23) by the trustees of the settlement or other the person of full age upon whom they are expressed to be conferred by the settlement, in the Act referred to as "Statutory owners" (s. 117 (1) (xxvi).

—where vested in personal representatives

Where an infant is beneficially entitled in possession to land for an estate in fee simple or for a term of years absolute or would, if of full age, be a tenant for life of or have the powers of a tenant for life over settled land, then during the minority of the infant, the powers conferred by the Act and the settlement on a tenant for life and on the trustees of the settlement are made exercisable by the personal representatives until a principal vesting instrument has been executed (s. 26). The last mentioned section applies although, the infant is a married woman; but a married woman of full age who is tenant for life of settled land, may exercise the powers conferred by the Act upon a tenant for life without the concurrence of her husband, and a restraint on anticipation in the settlement will not prevent her from so doing (s. 25). The powers of a tenant for life under the S. L. Act, 1925, may be exercised on behalf of a lunatic or defective by his committee or receiver, see S. L. Act, 1925, s. 28.

—where vested in married woman.

Married women. M. W. P. Act, 1882.

As regards the estates of married women which are not by reason of a restraint on anticipation or otherwise settled land within the meaning of the S. L. Act, 1925, a woman married after 1882, is enabled by the M. W. P. Act, 1882, ss. 1 & 2, to dispose of her property whensoever acquired, and to contract, so as to bind her separate estate; and a woman married before the Act has the same power as to property her title to which accrues after the Act: ss. 1, 5. In these cases, therefore, a married woman has the same power of granting leases as if she were unmarried; but women married before the commencement of the Act remain under the old disability as to their then existing property.

Lunatics.

As to the exercise of leasing powers vested in lunatics, see the Lunacy Act, 1890, ss. 120 (*h*), 122, 124; and as to fines, s. 123 (2), and Lunacy Act, 1891, s. 27 (4). A lunatic's estate may be let for a term not exceeding three years at the discretion of the committee, who may also grant leases, but only under an order of the Judge in Lunacy, see the Lunacy Act, 1890, ss. 120 and 122; as to execution of a lease by the committee, see s. 124, and *Lawrie* v. *Lees*, 7 App. Cas. 19; and as to lunatics not so found, see s. 116 (2); *Re Salt*, [1896] 1 Ch. 117. As to the jurisdiction of the Master, see Lunacy Act, 1891, s. 27, and the Lunacy Rules, 1893, r. 10. Generally as to the exercise of the powers of a committee of the estate of a lunatic not so found or of a defective see, L. Act, 1908, s. 1, and Mental Deficiency Act, 1913, ss. 1 & 64.

Every lease of land belonging to a lunatic or defective must now be made in the name, and on behalf of the lunatic or defective. See L. P. Act, 1925, s. 22, which thus adopts the former practice in lunacy in all cases. The section extends to the concurrence of the committee or receiver in leases of land, the legal estate in which is vested in the lunatic or defective jointly with any other person. See further, *ante*, p. 642, note (*a*).

Trustees for sale.

By virtue of s. 28 of the L. P. Act, 1925, trustees for sale have all the same powers of leasing the land held by them in trust for sale as a tenant for life would have under the S. L. Act, 1925, if the land were settled land; but any consent which would have been required on a sale under the trust for sale must be obtained. The powers of leasing so conferred may be revocably delegated from time to time, by writing, signed by the trustees, to any person of full age, not being merely an annuitant, for the time being beneficially entitled in possession to the net rents and profits of the land, during his life or for any less period (s. 29 (1), and any power so delegated must be exercised in the names and on behalf of the trustees delegating the power (sub-s. 2). The effect of s. 28 appears to be to enable the trustees to grant leases of the surface of the land apart from the minerals (see S. L. Act, 1925, s. 50); to grant building, mining or forestry leases (*ib.* s. 41); and to grant any lease with an option to purchase exercisable within ten years (*ib.* s. 51), overruling on this point *Oceanic Steam Navigation Co.* v. *Sutherberry*, 16 Ch. D. 236.

Personal representatives.

Personal representatives by virtue of s. 39 of the A. of E. Act, 1925, have for purposes of administration, or during a minority of any beneficiary or the subsistence of any life interest, all the powers, discretions, and duties conferred or imposed by law on trustees holding land on an effectual trust for sale, including presumably all the powers of leasing above referred to.

Crown lands.

Leases of Crown Lands can be granted under the Crown Lands Acts, 1829 to 1894, and the Crown Lands Act, 1906. As to leases not exceeding

31 years, and for building purposes, see the Act of 1829, ss. 22 & 23; as to mining leases, the Act of 1873, s. 4; and as to leases of the private estates of the Crown, see Crown Private Estates Acts, 1862 & 1873.

Rector or vicar.

At common law rectors and vicars could with the consent of the patron and ordinary grant leases without restriction, and the statute 32 Hen. 8, c. 28, did not apply to them. This, however, was altered, and they may, with the consent of the patron and ordinary, Co. Lit. 44a, grant a lease for a term not exceeding 21 years, or three lives, reserving the accustomed rent or more, under 13 Eliz. c. 10, and it has been held that, on account of the accustomed rent being required, no lands which had not been leased before could be leased under the statute, see *Doe* v. *Yarborough*, 1 Bing. 24. They may, under certain restrictions, grant farming leases with the consent of the bishop and patron for 14 years, and in some cases for 20 years, under the Ecclesiastical Leasing Act, 1842, subject to the restrictions imposed by ss. 1 and 2 of the Ecclesiastical Leases Act, 1861, and s. 1 of the Act of 1862. It may be added that the Act of 1842 does not repeal the Act of Elizabeth, and that leases granted under the latter will still be good, though not conformable with the restriction of the Act of 1842, and in this respect the Acts of 1861 and 1862 do not appear to have made any change: see *Jenkins* v. *Green*, 28 Beav. 87. The Ecclesiastical Leasing Acts, 1842 and 1858, do not enable the incumbent, with the consent of the patron and the Ecclesiastical Commissioners, to grant leases of any portion of the churchyard, see *St. Gabriel, Fenchurch Street* v. *London, &c., Co., Ltd.*, [1896] P. 95. A lease of a rectory or vicarage should contain a condition avoiding the lease on any spiritual person being ordered by the bishop of the diocese to reside therein: see 1 & 2 Vict. c. 106, s. 59. The omission of such a clause does not, however, make the lease void, but renders the lessor liable in damages on the lessee being turned out under the bishop's order: *Rickard* v. *Graham*, [1910] 1 Ch. 722.

Ecclesiastical corporations.

Most ecclesiastical corporations, including rectors and vicars, may, under the Ecclesiastical Leasing Act, 1842, as extended by the Acts of 1858 and 1865, with the consents therein mentioned, and the approval of the Ecclesiastical Commissioners, grant leases for any terms and in any manner with or without a premium. Under the Small Holdings, &c., Act, 1908, s. 40, sub-s. (1) (3), an incumbent may, with the consent of the Ecclesiastical Commissioners, grant leases for 35 years to a county council for the purposes of that Act. As to the determination of the tenancy, see s. 48 (2). See further as to leases by Ecclesiastical Corporations, Woodfall, 21st ed., 24 *et seq.*; Foa, 6th ed., 50 *et seq.*; Phillimore's Ecclesiastical Law, 2nd ed., pp. 1281 *et seq.*

Charitable corporations.

As to the power of trustees of a charity to make a lease, see Charitable Trusts Act, 1853, ss. 21, 26; the Act of 1855, ss. 16, 29, 38, 39; the Act of 1869, s. 12 and Sched.; Statute Law, &c., Act, 1883, Sched.; S. L. Act, 1925, s. 29; Tudor, 4th ed., 278 *et seq.* Where a lease of charity lands is granted by the trustees under an order of the Charity Commissioners the order will be endorsed on the engrossment before execution. The draft of the lease which requires the sanction of the Board is sent to the office for examination so that the Commissioners may be satisfied that the lease is in terms of which they approve. As to the execution of leases where the legal estate is in the Official Trustee of Charity Lands, see Charitable Trusts Act, 1855, s. 16; and the Act of 1869, s. 12.

Universities, &c.

As to leases by the Universities of Oxford, Cambridge, and Durham, and the Colleges in those Universities, and the Colleges of Winchester and Eton,

see Universities and College Estates Act, 1925, ss. 6–12, as to power to vary leases, apportion rents, and grant options for leases, ss. 18, 19, & 23, and as to separate dealings with surface and minerals, s. 22. As to leases by the colleges of Winchester and Eton, see Public Schools Act, 1868, s. 24, amended as to Eton College by the Public Schools (Eton College Property) Act, 1873, s. 2. Where the consent of the Ministry of Agriculture and Fisheries is required, it is given by the Ministry by an order under seal; the Ministry is not made party to the lease. The following plan has been adopted: An agreement for the lease was entered into subject to the approval of the Ministry, and then the order was made giving consent to a lease being granted pursuant to the agreement. Various Acts deal with the property of other schools, *i.e.*, Westminster, Charterhouse, Harrow, Rugby, and Shrewsbury, or some of them, see Public Schools Acts, 1868 to 1873, *sup.*; and various schemes have been framed and carried out in pursuance of statutory powers under these Acts.

Municipal corporations.

As to leases by Municipal Corporations, see Municipal Corporations Act, 1882, s. 108, as amended by the Local Government Act, 1888, s. 72; and as to leases for working men's dwellings, s. 111, and schedule VIII., forms N. & O. As to the necessity of complying strictly with the requirements of the Acts, see *Canterbury Corpn.* v. *Cooper*, 100 L. T. 597.

Dwellings for working classes.

As to leases by tenants for life to local authorities generally for erection of dwellings for the working classes, see the S. L. Act, 1925, ss. 57–107; which is substituted for Housing, Town Planning, &c., Act, 1909, s. 7 (1), and for s. 74 (1) of the Housing of the Working Classes Act, 1890; and see *Re Calverley's S.E.*, [1904] 1 Ch. 150, which was decided on the language of the last-mentioned Act, and see also Housing Act, 1925, s. 78. As to leases by local authorities for building dwelling-houses, see Housing Act, 1925, s. 59; and generally on the subject of houses for the working classes, see the Housing Act, 1925, Part III.; see, too, *Johnston* v. *Maconochie*, [1921] 1 K. B. 239.

Trustees of charity.

The trustees of a charity may (subject to the restrictions imposed by the Charitable Trusts Act, 1855, s. 29) grant any lease which they are expressly empowered to grant by the instrument creating the trust, or which is beneficial to the charity; as to the nature of the leases which they may grant in the absence of an express power, see Lewin, 12th ed., 640. By virtue of S. L. Act, 1925, s. 29, trustees have all the powers of a tenant for life over land vested in them on charitable trusts, which powers are exercisable subject to such consents or orders as would have been necessary if the Act had not been passed. A lease granted by them without the sanction of the Charity Commissioners, for a term for which under s. 29 such sanction is necessary, is absolutely void: *Bishop of Bangor* v. *Parry*, [1891] 2 Q. B. 277. They may also, with the consent of the Charity Commissioners, grant building, improving, or mining leases, under the Charitable Trusts Act, 1853, s. 21; see also s. 26, and the Act of 1855, s. 38. Under s. 39 of the last-mentioned Act, all leases granted by the trustees, pursuant to a scheme approved by the Board, are valid; see also s. 16, and the Act of 1869, s. 12, enabling a majority of the trustees to grant leases of lands vested in them, or the official trustee of charity lands.

Mortgagor and mortgagee.

Leases of land of any tenure which is in mortgage may, by the L. P. Act, 1925, s. 99, be granted by the mortgagor or mortgagee when respectively in possession, unless a receiver has been appointed, in which case the statutory power is vested in the mortgagee so long as the receiver acts and unless the

statutory power is excluded by the mortgage : the leases authorised being ordinary leases for twenty-one (or for mortgages made after 1925, fifty) years, or building leases for ninety-nine (or for mortgages made after 1925, nine hundred and ninety nine) years, at the best rent and subject to the ordinary restrictions ; see *Municipal, &c., Society* v. *Smith*, 22 Q. B. D. 70. A surrender of a lease of the mortgaged land may be accepted by either a mortgagor in possession or a mortgagee in possession but only with a view to enable the grant of an authorised lease to be made and not otherwise : L. P. Act, 1925, s. 100 ; but, by sub-s. 10, further and other powers to surrender leases may be given by agreement in writing and by sub-s. 13, a mortgagee may delegate his power of accepting surrenders to a receiver : *Robbins* v. *Whyte*, [1906] 1 K. B. 125. The lease must not include other land at an inclusive rent : *King* v. *Bird*, [1909] 1 K. B. 837 ; and see 53 Sol. J. 499. See generally as to powers of leasing in mortgages, *post*, p. 1011, and Vol. 2, pp. 63 *et seq.*

Agricultural leases. Allotments.

As to the power of limited owners to grant agricultural leases, see Agricultural Holdings Act, 1923, s. 24 (which replaces Landlord and Tenant Act, 1851, s. 1, as amended by s. 24 of the Agricultural Holdings Act, 1923), under which an agricultural lease by a tenant for life, though invalid against those entitled in remainder, is good until determined by a twelve months' notice to quit expiring at the end of a year of the tenancy, and as to leases by a tenant for life to County Councils for the purpose of the Small Holdings, &c., Acts, 1908 to 1919 ; see S. L. Act, 1925, s. 57, sub-s. 2 (6), which provides for leases by a tenant for life for the purpose of those Acts, at a nominal rent within limits as to quantity of the land, for any term of years absolute.

Disclaimer of leases.

As to the disclaimer of leases in bankruptcy, see Bankruptcy Act, 1914, ss. 54, 146 ; Bankruptcy Rules, 1915, rr. 90, 276 ; Wace, pp. 271 and 503 ; Elph. Introd., 7th ed., 234 ; Williams on Bankruptcy, 13th ed., pp. 342 *et seq.* ; 42 Sol. J. 210, 228 ; and Vol. 2, p. 88, note.

As to the position of a person holding an underlease or an agreement for an underlease in the event of the disclaimer of the head lease by the lessee's trustee in bankruptcy, see Bankruptcy Act, 1914, s. 54 (6) ; *Re Cock*, 20 Q. B. D. 343 ; *Re Finley*, 21 Q. B. D. 475 ; *Re Morgan*, 22 Q. B. D. 592 ; *Re Smith*, 25 Q. B. D. 536 ; *Re Baker*, [1901] 2 K. B. 628 ; *Re Carter & Ellis*, [1905] 1 K. B. 735 ; *Re Holmes*, [1908] 2 K. B. 812. The Court has the widest discretion in fixing the terms of the new lease given to the underlessee, &c. : *Fryer* v. *Ewart*, [1902] A. C. 187.

A tenant, after disclaimer of the lease by his trustees in bankruptcy, is not entitled to continue in occupation of the premises as a statutory tenant under the Increase of Rent, &c. (Restrictions) Act, 1920 ; *Reeves* v. *Davies*, [1921] 2 K. B. 486 ; but such a statutory tenancy is "*property*" within the meaning of s. 167 of the Bankruptcy Act, 1914 : *Parkinson* v. *Noel*, [1923] 1 K. B. 117.

Stamp.

As to the stamp duty on leases and agreements for leases, see Stamp Act, 1891, ss. 75—78 ; and first schedule, LEASE ; the Rev. Act, 1909, s. 8 ; and the Fin. (1909–10) Act, 1910, s. 75, rendering the *ad valorem* stamp duty on leases and agreements for leases double the amount previously chargeable. Exemption from the double duty is, however, afforded by the Rev. Act, 1911, s. 15, in respect of any consideration, whether constituting the whole or part only of the consideration for the lease, which consists of a capital sum not exceeding £500, provided that any rent reserved as part of the consideration does not exceed the sum

of £20 a year, and that the instrument contains the declaration as to value prescribed by the Act and set out *ante*, p. 829.

Leases of registered land.

Any lessee or other person entitled to or interested in a lease of registered land, where the term granted is not an overriding interest, may apply to the registrar to register notice of such lease in the prescribed manner, and when so registered, every proprietor and the persons deriving title under him is deemed to be affected with notice of such lease as an incumbrance on the land: see L. R. Act, 1925, s. 48 (1) If the proprietor of the registered land affected does not concur in the registration, the applicant must obtain an order of the court authorising registration of notice of the lease, and must deliver the order to the registrar accompanied with the original lease or a copy thereof: L. R. Act, 1925, s. 48, Rules 186–189, the last of which rules provides for the case where the lease or agreement is not produced.

Compulsory registration.

In any area in which registration is compulsory every grant of a term of years absolute not being less than 40 years from the date of the delivery of the grant, will on the expiration of two months from the date thereof, or of any authorised extension of that period, become void so far as regards the grant of the legal estate in the land comprised in the grant, or so much of such land as is situated within the area affected, unless the grantee, *i.e.*, the person who is entitled to be registered as proprietor of the land or his successor in title or assign has in the meantime applied to be registered as proprietor thereof: L. R. Act, 1925, s. 123. Where the beneficial interests in a lease and a reversionary lease to commence at any time within one month after the expiration of the lease are vested in the same person, the leases are deemed to create one continuous lease for the purposes of s. 8 of the L. R. Act, 1925: see L. R. R. 47.

Registration of lease.

Provisions relating to application for and the effect of registration of leasehold land will be found in L. R. Act, 1925, ss. 8–12, L. R. R. 19, 20, 21.

When the lease or agreement confers a right of pre-emption, such right may be registered under the L. C. Act, 1925, s. 10, sub-s. 1, Class C. (iv). As to the procedure, under the L. R. Act, on the determination of a lease, see Rules 200 to 203, 205 to 209.

Costs.

The scale fee applicable to leases, other than mining leases, will be found in the second schedule to the Solicitors Remuneration Act, 1881; see also General Order, 1925. The scale fee includes the remuneration of the solicitor for preparing an agreement for the lease: *Savery* v. *Enfield Local Board*, [1893] A. C. 218: see also *In re Fletcher & Dyson*, [1903] 2 Ch. 688. For the costs where leases follow a general printed form, see *Wellby* v. *Still*, [1895] 1 Ch. 524. The ordinary practice is for the lease to be prepared by the lessor's solicitor at the lessee's expense: *Grissell* v. *Robinson*, 3 Bing. N. C. 10; *Cautley* v. *Powell*, 10 Ir. R. C. L. 200; and see Foa, 6th ed., 384 *et seq.*; Woodfall, 21st ed., 243 *et seq.* In estimating the costs properly payable by the lessee to the lessor's solicitor, the costs of the counterpart (if any) must be deducted from the scale fee: *Re Negus*, [1895] 1 Ch. 73.

Fees.

The fees payable on registration of leasehold land are now regulated by the Land Transfer Fee Order, 1908: see Current Index, 1908, p. cxi.

Rent and Mortgage Interest (Restrictions) Acts.

The Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925, interfere considerably, in cases to which the Acts apply, with the right of a landlord to deal with his own property as he thinks fit, even after the determination of a tenancy.

These Acts consist of a Principal Act—the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920—in this note referred to as the Act of 1920, and the following five amending or continuation Acts:

1920 to 1925.

(1) The Increase of Rent and Mortgage Interest Restrictions (Continuance) Act, 1923—merely a temporary continuance Act;

(2) The Rent Restrictions (Notices of Increase) Act, 1923; see *post*, p. 840;

(3) The Rent and Mortgage Interest Restrictions Act, 1923, in this note referred to as the Act of 1923;

(4) The Prevention of Eviction Act, 1924—in this note referred to as the Act of 1924; and,

(5) The Rent and Mortgage Interest (Restrictions Continuation) Act, 1925—in this note referred to as the Act of 1925.

These Acts impose considerable restrictions, at any rate until the 25th December, 1927, for England, and 28th May, 1928, for Scotland: see Act of 1925, on the right of a landlord (which expression includes any person from time to time deriving title under the original landlord: see Act of 1920, s. 12 (f); also any person other than the tenant, who is or but for the Act would be entitled to the possession of the premises to which the Act applies, see s. 12 (g)), as modified by the Act of 1923, s. 2, to increase the rent of or eject from such premises the tenant, which expression includes a sub-tenant, the widow of a tenant dying intestate who was residing with him at the time of his death, or if the tenant leaves no widow or is a woman, such member of the tenant's family so residing as may be decided in default of agreement by the county court, s. 12 (*g*), and also any person deriving title under the original tenant, such as his executor or administrator: s. 12 (*f*); *Collis* v. *Flower*, [1921] 1 K. B. 409; *Mellows* v. *Low*, [1923] 1 K. B. 522; but not his assign, *Keeves* v. *Dean*, *Nunn* v. *Pellegrini*, [1924] 1 K. B. 685. The Act does not, however, apply where there is no letting and a person has occupied premises by virtue of an employment, which has ceased: see *National Steam Car Co.* v. *Barham*, 122 L. T. 315.

Premises to which Acts apply.

The Acts apply to a house or part of a house let as a separate dwelling, where either the annual amount of the standard rent (as to which, see *infra*), or the rateable value does not exceed in the Metropolitan Police District £105, in Scotland £90, and elsewhere £78, s. 12 (2). The application of the Acts is not excluded by reason only that part of the premises is used as a shop or office for business trade or professional purposes: see Act of 1920, s. 12 (2) (ii); Act of 1923, ss. 2, 10, as to the exclusion of dwelling-houses from the application of the Act of 1920, and see also *Epsom Grand Stand Association* v. *Clarke*, 35 T. L. R. 525; *Callaghan* v. *Bristowe*, 89 L. J. K. B. 817; *Waller* v. *Thomas*, [1921] 1 K. B. 541; *Glossop* v. *Ashley*, [1921] 2 K. B. 451; [1922] 1 K. B. 1; *Ellen* v. *Goldstein*, 89 L. J. Ch. 586; *Colls* v. *Parnham*, [1922] 1 K. B. 325; *Williams* v. *Perry*, [1924] 1 K. B. 936; *Prout* v. *Hunter*, [1924] 2 K. B. 736; *Phillips* v. *Hallahan*, [1925] 1 K. B. 756; and see *Duke of Richmond* v. *Dewar*, [1921] W. N. 356. For the purposes of the Acts, land or premises let with a house are treated as part of the house, if the rateable value of the land and premises let separately would be less than one quarter of the rateable value of the house; but the Act of 1920 does "not apply to a house let together with land other than the site of the house": s. 12 (2) (iii); see *Early* v. *Drummond*, 39 T. L. R. 171; and see *Wellesley* v. *White*, [1921] 2 K. B. 204; *Rossiter* v. *Langley*, [1925] 1 K. B. 741. Rooms in a dwelling-house subject to a separate letting wholly or partly as a dwelling are for the purposes of the Act treated as a part of a dwelling-house let as a separate dwelling: s. 12 (8). But if two suites of rooms are let at one rent, the rent cannot be apportioned so as to bring each suite within the Act: *Rider* v. *Rollit*, [1920] W. N. 227.

The Act stereotypes the rent of the house and not the rent payable by an individual tenant, s. 12 (6); and see *King* v. *York*, 1919 (W.N.) 59. A house, however, may be so entirely reconstructed that the Act ceases to apply to it: *Phillips* v. *Barnett*, [1922] 1 K. B. 222; and see *Sinclair* v *Powell*, [1922] 1 K. B. 393; *Marchbank* v. *Campbell*, [1923] 1 K. B. 245; *Sutton* v. *Begley*, [1923] 2 K. B. 694; *Barrett* v. *Hardy, &c., Ltd.*, [1925] 2 K. B. 220; *Hyman* v. *Steward*, [1925] W. N. 135; 41 T. L. R. 501. The Act applies to a tenancy for a term certain: *Cruise* v. *Terrell*, [1922] 1 K. B. 664.

Furnished houses.

The Acts do not apply to houses let furnished: see Act of 1920, s. 12 (2) (i); Act of 1923, s. 10; and see *Wilkes* v. *Goodwin*, [1923] 2 K. B. 86; *Hocker* v. *Solomon*, 91 L. J. Ch. 8; but the lessor of such a house cannot recover any rent that exceeds by 25 per cent. the normal profit, *i.e.*, the profit that might reasonably have been expected from a similar letting in the year ending the 3rd August, 1914, s. 9, and if his charge is extortionate he is liable on summary conviction to a fine not exceeding £100: s. 10. If the rent also includes board and attendance, the Acts do not apply: Act of 1920, s. 12 (2) (i); but the stipulated payments for such services must be under the lease not exclusive but part of the rent: *Wood* v. *Wallace*, 90 L. J. K. B. 319. *Hocker* v. *Solomon*, *supra*. Carrying up coals and removing refuse may constitute "attendance": *Nye* v. *Davis*, [1922] 2 K. B. 56; but see *King* v. *Millen*, [1922] 2 K. B. 647; *Wood* v. *Carwardine* [1923] 2 K. B. 185; *Michael* v. *Phillips*, [1924] 1 K. B. 16; *Prout* v. *Hunter*, [1924] 2 K. B. 736.

A dwelling-house is not to be deemed to be *bonâ fide* let at a rent which includes payments for attendance or furniture unless the amount of the rent fairly attributable to such things forms a substantial part of the whole rent: Act of 1923, s. 10.

Houses erected or reconstructed after 2 April, 1919.

The Act does not apply to dwelling-houses erected after or in course of erection on the 2nd April, 1919, or to any dwelling-house which has been since that date or was at that date being *bonâ fide*, reconstructed by way of conversion into two or more separate and self-contained flats or tenements: Act of 1920, s. 12 (2). The sub-section does not negative the possibility of such a reconstruction of a dwelling-house into flats before the date fixed as to render the standard rent of the original house inapplicable in considering the standard rents of the flats: *Sinclair* v. *Powell*, [1922] 1 K. B. 393; *Marchbank* v. *Campbell*, [1923] 1 K. B. 245; *Sutton* v. *Begley*, [1923] 2 K. B. 694. Nor does it apply to a tenancy where the rent payable by the tenant under the terms of the letting (*Mackworth* v. *Hellard*, [1921] 2 K. B. 755) is less than two-thirds of the net (*Waller & Son* v. *Thomas*, [1921] 1 K. B. 541) rateable value of the dwelling-house: s. 12 (7); *Joy* v. *Eppner*, [1925] 1 K. B. 362; and see *Veale* v. *Cabezas*, [1921] (W. N.) 311.

Business premises.

Since the 24th June, 1921, the Act of 1920 has ceased to apply to business premises: s. 13 (3). But this does not affect the protection given by s. 12 (2) (ii), to premises partly used for business purposes: *Colls* v. *Parnham*, [1922] 1 K. B. 325.

Tenancy at will.

The Act does not apply to a tenancy at will: *Ecclesiastical Commissioners* v. *Hilder*, 36 T. L. R. 771.

Restrictions on increases of rent.

Except increases permitted by the Act, a landlord cannot recover from his tenant any increase of rent made since the 25th March, 1920, in respect of a dwelling-house to which the Act applies in excess of the standard rent, s. (1), and as to the date from which the increase begins: see *Goldsmith* v. *Orr*, 89 L. J. K. B. 901; *Raikes* v. *Ogle*, [1921] 1 K. B. 576; *Michael* v. *Phillips*, [1924] 1 K. B. 16; *W. H. Brakspear, &c., Ltd.* v. *Barton*, [1924]

2 K. B. 88. Whether any increase, other than those specified in the First Schedule to the Act is permitted in a case where the agreed rent is less than the standard rent, *quære:* see *Glossop* v. *Ashley*, [1921] 2 K. B. 451; [1922] 1 K. B. 1.

Standard rent.

By standard rent is meant the rent at which the dwelling-house was let on the 3rd August, 1914, or where it was not let on that date, the rent at which it was last let before that date or, if first let after that date, the rent at which it was first let. The county court has power to determine summarily any question as to the amount of the rent, &c., of any dwelling-house to which the Acts apply or as to the permitted increase: see Act of 1923, s. 11; this supersedes the decision in *Broonhall* v. *Property Agents & Owners*, [1922] 1 K. B. 311: see also *Bourne* v. *Litton*, [1924] 2 K. B. 10. Where premises are let at a progressive rent the maximum rent payable is the standard rent. If at the date by reference to which the standard rent is calculated, the rent was less than the rateable value on the 3rd August, 1914, see Act of 1920, s. 12 (1) (*e*)) the rateable value at that date is the standard rent, s. 12 (1) (*a*). Rates payable by the landlord cannot be deducted from the rent for the purpose of computing the standard rent: *Westminster & General, &c., Co.* v. *Simmons*, 35 T. L. R. 669; *Isaacs* v. *Titlebaum*, [1920] W. N. 29; *Laurie* v *Woods*, [1920] 2 I. R. 106; *Mackworth* v. *Helland, sup.*; a tied covenant in a lease must be disregarded for the purpose of the Acts: *W. H. Brakspear, &c., Ltd.* v. *Barton, sup.* Where premises are let at a rent lower than the standard rent the landlord cannot by terminating the tenancy and giving notice of increase raise the rent to the standard rent. But increases must be based on the standard rent: *Dufty* v. *Palmer*, [1924] 2 K. B. 35.

Whether the standard rent is the rent paid by the person who was the tenant in actual occupation on August 3rd, 1914, is doubtful; but when the question arises between a landlord and a sitting tenant who was in occupation at that date, the standard rent is the rent that the tenant was paying at that date, even if such tenant was originally a sub-tenant who paid a smaller rent than the original lessee: see *Glossop* v. *Ashley*, [1921] 2 K. B. 451; [1922] 1 K. B. 1.

Rent may be increased within the meaning of the Act by the transfer to the tenant of any burden or liability previously borne by the landlord if the result of such transfer is to make the terms on which the dwelling-house is held less favourable to the tenant than the previous terms; but the rent is not to be deemed to be increased by the transfer from the landlord to the tenant of the liability for rates, if a corresponding reduction is made in the rent: Act of 1920, s. 2 (3); the discontinuance of discount on goods supplied under a covenant in the lease by which the lessee was tied does not amount to a transfer within the section: *W. H. Brakspear, &c., Ltd.* v. *Barton*, [1924] 2 K. B. 88.

Permitted increases of rent.

The following increases of rent are permitted under the Act, s. (2) of the Act of 1920.

1. Where the landlord has since the 4th August, 1919, expended money on improvements for structural alterations (not being expenditure on decoration or repairs) he may increase the rent at a rate not exceeding six, or, if the expenditure has been incurred since the passing of the Act, eight p.c., p.a. on the amount of such expenditure.

2. A landlord who pays rates, including water rates and charges, see s. 12 (1) (*d*), may increase the rent by the amount of any increase in rates since the 3rd August, 1914, whether such increase is caused by an increase

in rates or an increase in the rateable value of the premises: see *Steel* v. *Mahoney*, 34 T. L. R. 327; but if the amount actually paid by him is less than the amount assessed, the rent can only be increased by the lesser amount: *Nicholson* v. *Jackson*, 90 L. J. K. B. 112.

The landlord is treated as continuing to be liable to pay the increased rate until the rate is next demanded: s. 12 (1) (*d*); and see *Cardiff Corporation* v. *Isaacs*, 90 L. J. K. B. 1108.

3. In addition to the above amounts the landlord may increase the rent by an amount not exceeding fifteen p.c. of the net rent, i.e., the standard rent less the amount of rates paid by the landlord: see s. 12 (1) (*c*).

4. In further addition to the above amounts a landlord who is responsible for the whole of the repairs (see as to the meaning of these words s. 2 (5)) may increase the rent by an amount not exceeding twenty-five p.c. of the net rent; or if he is responsible for part only of the repairs, by such amount as may be agreed or may be determined by the County Court to be fair and reasonable: see *Bourne* v. *Litton*, [1924] 1 K. B. 231; 2 K. B. 10, C. A.

The tenant or the sanitary authority has a right to apply to the County Court (see *X Rays, Ltd.* v. *Armitage*, [1922] W. N. 27) within three months of any increase under the last two heads to suspend the increase on the ground that the house is not fit for human habitation or is in other respects not in a reasonable state of repair: s. 2 (2).

Under the Act of 1923 where part of a dwelling-house, to which the Act of 1920 applies, is lawfully sublet as a dwelling-house in addition to any increases allowed by the Act of 1920, an amount not exceeding 10 per cent. of the net rent of the dwelling-house comprised in the subtenancy shall be deemed to be a permitted increase in the case of that dwelling-house and half that amount shall be deemed to be a permitted increase in the case of the dwelling-house comprised in the tenancy, s. 7.

Notice to quit.

The Act of 1920 did not enable a landlord to increase the rent when he could not do so under the terms of the tenancy but only in respect of a period during which but for that Act the landlord would have a legal right to possession: s. 3 (1); and see *Hill* v. *Hasler*, [1921] 3 K. B. 643. It followed, therefore, that if there was a subsisting tenancy, the landlord's notice of intention to increase the rent under the Act, had to be accompanied or preceded by a valid notice to quit: *Hill* v. *Hasler*, *sup.*; *Peizer* v. *Federman*, [1921] W. N. 320; *Newell* v. *Crayford Cottage Society*, [1922] 1 K. B. 656; *Schmit* v. *Christy*, [1922] 2 K. B. 60; *Kerr* v. *Bryde*, [1923] A. C. 16; *Michael* v. *Phillips*, [1924] 1 K. B. 16; but now by reason of the Rent Restrictions (Notices of Increase) Act, 1923, passed in consequence of the decision in *Kerr* v. *Bryde*, a notice of intention to increase the rent has effect and shall be deemed always to have had effect as if it were or had been also a notice to terminate the existing tenancy on the day immediately preceding the day as from which the increase is or was to take effect or the earliest day thereafter on which if it had been a notice to terminate it would have been effective for that purpose: see s. 1, sub-s. 1: *Aston* v. *Smith*, [1924] 2 K. B. 143.

Rent Restrictions (Notices of Increase) Act, 1923.

If the landlord may increase the rent under the Act of 1920, he cannot recover the increase until after the expiration of a valid four weeks' notice in writing to the tenant of his intention to increase the rent, or if the increase is on account of rates one week's notice: s. 3 (2). Such a notice is not invalidated by a defect, such as giving too long notice, which does not damnify the tenant: *Steel* v. *Mahoney*, 34 T. L. R. 327; *Hill* v. *Hasler*, *sup.* But the notice must be correct both in form and substance: *Peizer*

Commencement of increase.

v. *Federman, sup.*; *Penfold* v. *Newman*, [1922] 1 K. B. 645; *Bourne* v. *Litton, sup.* The county court may in certain cases amend notices although not accompanied by notices to quit: Act of 1923, ss. 6, 8: *Williams* v. *Britannia Merthyr Co., Ltd.*, [1924] 2 K. B. 334.

A false or misleading statement in the notice renders the landlord liable to a fine on summary conviction: s. 3 (2).

After service of a valid notice of an increase the increase may be continued without service of a fresh notice on any subsequent tenant: Act of 1920, s. 3 (2).

If a tenant obtains from a sanitary authority a certificate that the house is not in a reasonable state of repair, and such lack of repair is not due to the tenant's neglect, and serves a copy thereof on his landlord it forms a defence against claims for increase of rent permitted under the Act of 1920, s. 2, sub-s. 1 (*c*) (*d*), whilst such disrepair continues: see Act of 1923, s. 5.

But as against a new tenant a landlord cannot, upon a re-letting, by a mere agreement increase the rent from the outset above the standard rent: *Glossop* v. *Ashley*, [1921] 2 K. B. 451; [1922] 1 K. B. 1; *Schmit* v. *Christy*, [1922] 2 K. B. 60.

On the other hand, if the landlord has given a valid notice to quit but the tenant continues in possession under the provisions of the Act, acceptance of rent by the landlord does not constitute a fresh tenancy. Consequently there is no need for the landlord to give a fresh notice before raising the rent to the permitted extent: see s. 16 (3); *Davies* v. *Bristow*, [1920] 3 K. B. 428; *Shuter* v. *Hersh*, [1922] 1 K. B. 438; *Wolff* v. *Smith*, [1923] 2 Ch. 393. It is immaterial whether the tenant in point of fact assents to or dissents from the landlord's demand; if he remains in occupation he remains upon the terms which the statute enables the landlord to impose: *Glossop* v. *Ashley*, [1921] 2 K. B. 451; [1922] 1 K. B. 1.

The Act of 1923 contains provisions for the Act of 1920 ceasing to apply to dwelling-houses hitherto under that Act, when the landlord after 31st July, 1923, comes into possession: see s. 2, amending s. 5, sub-s. 7 of the Act of 1920. These provisions may be shortly summarised as follows, but reference should be made to the section itself: The Act of 1920 will cease to apply to a dwelling-house of which the landlord was in actual possession on the 31st July, 1923, or comes into possession any time thereafter provided that where when part is lawfully sublet the Act of 1920 still applies to that part, and provided that where a landlord comes into possession under an order for the non-payment of rent the Act still applies: s. 2 (1). The Act of 1920 will cease to apply where, after 31st July, 1923, the landlord of a house to which the Act of 1920 applies grants to the tenant a lease of the house for a term ending at some date not earlier than one year after the date fixed at the time at which the lease is granted for the expiration of the Act of 1920 being a term of not less than two years and a payment of any agreed sum of part of the consideration for such lease is valid. Provided that any part of the house is lawfully sublet at the commencement of the term the Act of 1920 still applies to that part: s. 1 (2): see *Jenkinson* v. *Wright*, [1924] 2 K. B. 645; *Hall* v. *Rogers*, 41 T, L. R. 341. *Dunbar* v. *Smith*, [1926] 1 K. B. 360; *Catts* v. *Curry*, 42, T. L. R. 243.

The statutory tenant cannot rely on either s. 212 of the Common Law Procedure Act, 1852, or on s. 14 of the Conveyancing Act, 1881 (now s. 146 of the L. P. Act, 1925): *Brewer* v. *Jacobs*, [1923] 1 K. B. 528.

Whether proceedings under O. xiv are or are not applicable, see *Gill* v. *Luck*, [1923] W. N. 284, not followed on this point in *Gunter* v. *Davis*,

[1925] 1 K. B. 124. An action for the recovery of possession of a house to which the Acts apply is a claim "arising out of this Act" within the meaning of s. 17, sub-s. 2, and the County Court has jurisdiction though the rent exceeds £100: *Russoff* v. *Lipovitch*, [1925] 1 K. B. 628. A landlord may confine his claim to part only of the demised premises. S. 5 of the Act of 1920 is not a statutory defence or one of which notice must be given under O. X., r. 18, C. C. Rules, 1903, *Salter* v. *Lask*, [1924] 1 K. B. 754.

Restrictions on recovery of possession.

In making an order for the recovery of possession every circumstance that may affect the interests of the landlord or the tenant should be taken into consideration: *Shrimpton* v. *Rabbits*, 40 L. T. R. 541; *Williamson* v. *Pallant*, [1924] 2 K. B. 173; but the Court has an absolute discretion as to making any order or judgment for the recovery of possession of any dwelling-house to which the Acts apply or the ejectment of a tenant therefrom; and notwithstanding any agreement to the contrary its discretion cannot be exercised at all except on one of the following grounds (Act of 1923, sub-s. 1 of s. 4, which section replaces s. 5 of the Act of 1920; and see *Barton* v. *Fincham*, [1921] 2 K. B. 291; *Rossiter* v. *Langley*, [1925] 1 K. B. 741), namely:—

1. The tenant is in default in payment of rent or in the fulfilment of some other of the obligations of his tenancy: see *Benabo* v. *Horsely*, [1920] W. N. 299; *Upjohn* v. *Macfarlane*, [1922] 2 Ch. 256.

2. The tenant or his lodger or sub-tenant has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers or been convicted for illegal, or immoral use (see *S. Schneiders, Ltd.* v. *Abrahams*, [1925] 1 K. B. 301) of the premises, or committed waste, and where in the case of a lodger or sub-tenant the tenant has not taken reasonable steps for his removal.

3. The tenant has given notice to quit and in consequence of such notice the landlord has contracted to sell or let the premises or would otherwise, be seriously prejudiced by not obtaining possession. As to the meaning of "tenant" in this sub-section: see *Hylton* v. *Heal*, [1921] 2 K. B. 438. Except as provided by this sub-section a tenant giving notice to quit is protected by the Act: see *Artizans Dwelling Co.* v. *Whittaker*, [1919] 2 K. B. 301: but in a case within the sub-section he may be liable for a penal rent under the Distress for Rent Act, 1737, s. 18: see *Flannagan* v. *Shaw*, [1920] 3 K. B. 96.

4. The premises are reasonably required for occupation by the landlord or his son or daughter over eighteen years old, or by some person engaged in the whole time employment of himself or his tenant or with whom, conditional on housing accommodation being provided, a contract for such employment has been made, at the date of the order: see *Rex* v. *Rodgers*, 118 L. T. 718; *Spencer* v. *Fox*, [1922] W. N. 141; cases under the earlier Acts. The landlord, however, must satisfy the Court by positive evidence that at the time of making the order, alternative accommodation is available reasonably suitable to the means of the tenant and the needs of the tenant and his family as regards extent proximity to place of work which consists of either a house to which the Act applies or of premises to be let on terms which will give the tenant equivalent security of tenure to that afforded by the Act in the case of a house to which the Act applies: *Nevile* v. *Hardy*, [1921] 1 Ch. 404; *Kimpson* v. *Markham*, [1921] 2 K. B. 157; *Lees* v. *Duley*, [1921] W. N. 283. As to what, under the Act of 1920, was held to be equivalent alternative accommodation: see *Chiverton* v. *Eade*, [1921] 2 K. B. 30; *Crutchley* v. *White*, 89 L. J. K. B. 815; *Wilcock* v. *Booth*, 89 L. J. K. B. 864; *Flint* v. *Ead*, 37 T. L. R. 708. "Available" in s. 5, sub-

s. 1 (*d*), of the Act of 1920 meant available for the tenant whom it was sought to eject: *Topping* v. *Hughes*, C. A., [1925] N. I. R. 90. The landlord need not, however, prove the existence of alternative accommodation, if (*a*) the tenant was an employee or occupied as such and the employment has ceased: see *Lever Bros.* v. *Caton*, 37 T. L. R. 664; (*b*) the dwelling-house is required for the occupation of a person engaged on work necessary for the proper working of an agricultural holding: see *Smith* v. *Primavesi*, [1921] W. N. 291; or with whom, conditional on housing accommodation being provided, a contract for employment on such work has been entered into; (*c*) the landlord gave up his occupation of the premises in consequence of military service; (*d*) the house is reasonably required by the landlord who became landlord by purchase before 6th May, 1924, for a residence for himself or his son or daughter over eighteen years old and the Court is satisfied having regard to all circumstances, including alternative accommodation available for the landlord or the tenant, that greater hardship would be caused by refusing an order for possession than by granting it: see Act of 1924 amending paragraphs (iv) and (v) of sub-s. 1 of s. 5, substituted by s. 4 of the Act of 1923 for the original s. 5 of the Act of 1920.

5. The dwelling-house is reasonably required for the purpose of the execution of the statutory duties and powers of a local authority on statutory undertaking, or for any purpose which in the opinion of the Court is in the public interest, and the Court is satisfied of the existence of alternative accommodation: *Parry* v. *Harding*, [1925] 1 K. B. 111.

6. The landlord became landlord after military service, and requires the house for his personal occupation, and offers the tenant reasonable accommodation in the house: see *Kentish* v. *Sneath*, 37 T. L. R. 586. The benefit of this provision does not extend to the executrix of an ex-service man who has died after giving the tenant notice to quit: *Squier* v. *Hore*, [1921] W. N. 313.

7. The house is required for the residence of a former tenant who gave up his occupation for military service. This means is required by the landlord for a former tenant: *Messenger* v. *Hutton*, 37 T. L. R. 464; but the former tenant does not acquire any right of action which he had not before the Act: *Goodwin* v. *Rhodes*, [1921] 2 K. B. 182.

8. The tenant without the consent of the landlord has after 31st July, 1923, assigned or sublet the whole of the dwelling-house or sublet part of it the remainder being already sublet.

9. The dwelling-house consists of or includes premises licensed for the sale of intoxicating liquor and the tenant has committed an offence as holder of the licence or has not conducted the business to the satisfaction of the justices or police or has carried it on in a manner detrimental to public interest or the renewal of the licence has for any reason been refused.

The Court may adjourn any application for or the making or giving of any order for recovery of possession or ejectment for such time and on such conditions as it may think fit, and if such conditions are complied with may discharge or rescind any such order or judgment: Act of 1920, s. 5 (2).

An order for recovery of possession or ejectment against a tenant is not to affect the right of a sub-tenant to whom the premises or any part thereof have been lawfully sublet: Act of 1920, s. 5 (5). It would seem that if the premises are sublet in breach of a covenant against assigning the sub-tenant is not entitled to the protection of the Act: cf. *Dick* v. *Jacques* 36 T. L. R. 773.

Restric- In cases where the Acts apply no distress for rent can be levied except

with the leave of the County Court and in respect of any application for such leave that Court has the same powers with respect to adjournment, stay, suspension, postponement and otherwise, that it has under the Act with regard to applications for recovery of possession: see *Townsend* v. *Charlton*, [1922] 1 K. B. 700. This does not, however, prevent the levying of a distress under s. 160 of the County Courts Act, 1888. tions on distress for rent.

No fine, premium, or pecuniary consideration in addition to the rent may be required as a condition of the grant, renewal, or continuance of a tenancy or sub-tenancy of any dwelling-house to which the Act applies, and contravention of this provision renders the offender liable to a fine on summary conviction: Act of 1920, s. 8 (1) (2); and an excessive charge for furniture purchased as a condition of grant, renewal, &c., of a tenancy is to be treated as if it were a fine: Act of 1923, s. 9. Premiums.

The provision does not, however, apply to the grant, renewal, or continuance for a term of fourteen years or upwards of any tenancy: Act of 1920, s. 8 (3); nor does it prohibit the payment to a tenant of a pecuniary consideration for the assignment or surrender of his lease: *Mason* v. *Harris*, [1921] 1 K. B. 653; *Remmington* v. *Larchin*, [1921] 3 K. B. 404.

If a tenant pays any rent which is irrecoverable under the Act, he may (within six months of its payment: see Act of 1923, s. 8, sub-s. 2) recover it back from the landlord or deduct it from any rent payable: Act of 1920, s. 14 (1); and see *Rawlinson* v. *Alger*, 90 L. J. K. B. 497. Right of tenant to recover rent made irrecoverable.

Entries purporting to show that a tenant is liable for any arrears of rent in respect of a sum irrecoverable by the Act, render the person making them liable to summary conviction and fine: Act of 1920, s. 14 (2).

A statutory tenant, that is to say a tenant who retains possession of a dwelling-house by virtue of the provisions of the Act and not by virtue of his original tenancy, is entitled to the benefit and subject to the obligations of all the terms and conditions of the original tenancy, and can give up possession only on giving such notice as is required by the original tenancy, or, if no notice is required, on giving not less than three months' notice: Act of 1920, s. 15 (1); but his right is a personal one to retain possession and cannot be assigned: *Keaves* v. *Dean*, [1924] 1 K. B. 685. The statutory tenant.

A person whose tenancy has expired and who stays in against the landlord's wish is within this section, which, however, only extends to legal tenancies: *Remon* v. *City of London Real Property Co.*, [1921] 1 K. B. 49; *Cruise* v. *Terrell*, [1922] 1 K. B. 664.

A tenant who remains in possession after disclaimer of the lease by his trustee in bankruptcy is not a statutory tenant: *Reeves* v. *Davies*, [1921] 2 K. B. 486; but such a tenancy is "property" of the tenant passing to his trustee, and, if he disclaims, the tenant's interest is at an end: *Parkinson* v. *Noel*, [1923] 1 K. B. 117.

If a tenancy to which the Acts apply is by any means determined, a sub-tenant to whom the premises have been lawfully sub-let is, subject to the provisions of the Acts deemed to become the tenant of the landlord on the same terms as he would have held from the tenant had the tenancy continued: Act of 1920, s. 15 (3); and see *Hylton* v. *Heal*, [1921] 2 K. B. 438. In such a case the tenant is not liable for any rent or payments for use and occupation after he has himself given up possession: *Reynolds* v. *Bannerman*, [1922] 1 K. B. 719.

A statutory tenant may agree with the landlord to give up his possession for pecuniary or other valuable consideration but if he make such an agree-

ment with any other person he is liable to a fine on summary conviction : Act of 1920, s. 15 (2).

As against a statutory tenant a landlord who obtains an order for recovery of possession or ejectment is not bound to give any notice to quit : Act of 1920, s. 15 (1). And a landlord who has given a tenant notice to quit does not waive the notice by acceptance of rent from the tenant, if he holds on as statutory tenant after the notice to quit has expired : Act of 1920, s. 16 (3) ; and see *Davies* v. *Bristow*, [1920] 3 K. B. 428 ; *Town Properties, &c., Co.* v. *Winter*, 37 T. L. R. 979. Where a tenant remains in possession after notice to quit subsequent acceptance of rent cannot be taken as a waiver of the notice so as to create a new tenancy : *Shuter* v. *Hersh*, [1922] 1 K. B. 438, 444 ; see *Wolff* v. *Smith*, [1923] 2 Ch. 393.

Part II. of the Act of 1923 makes provisions to take effect after the expiration of the Act of 1920 that is for five years after 25th December, 1927 (for England) or 28th May, 1928 (for Scotland). During that time the Court has power to refuse an order for ejectment if it appears that the proceedings are harsh or oppressive or that exceptional hardship will be caused to the sitting tenant : s. 12 (1) ; and the Court may set aside a notice to quit and determine what is a fair increase of rent : s. 12 (2) ; but the Court shall not exercise any of the powers given by the foregoing provisions of that section in any case where it is satisfied that greater hardship would be caused to the landlord by the exercise of the power than would be caused to the tenant by the refusal to exercise it : s. 12 (3) ; the Court has the same powers in respect of part of a dwelling-house where that part is lawfully sublet : s. 12 (4). The section does not apply to proceedings against a sitting tenant under the Small Tenements Recovery Act, 1838, and any such proceedings shall on the application of the sitting tenant be discontinued subject to any provision that may be made by rules for transfer to the county court : s. 12 (6).

The Court may reduce rents in certain cases pending the execution of repairs : s. 13.

The other provisions of this Act do not appear to concern particularly the draftsman of leases. As to the Rent Restriction Acts, generally, see Foa, 6th ed., pp. 911 *et seq.*

PRECEDENTS.

I.

AGREEMENT *for* TENANCY *of* HOUSE *in a* TOWN *from* YEAR *to* YEAR. *Short form.* VARIATIONS *where the* TENANT *has the* OPTION *to take a repairing* LEASE, *and where the* HOUSE *is to be sub-let to* WEEKLY TENANTS.

AN AGRMT made this —— day of ——, BETN A., of, &c. (hrinar called the landlord) of the one pt, & B., of, &c. (hrinar called the tenant) of the other pt, WHEREBY THE LANDLORD agrees to let (*a*), & the tenant agrees to take THE HOUSE situate & being No. ——, in —— Street, ——, in the Parish of ——, in the City [County] of ——, with the appurts from the —— day of —— next, from yr to yr (*b*) AT THE yrly rent of £——, payable quarterly on the usual quarter days, *or*, "on the —— day of ——, &c.," either (*c*) party to be at liberty to terminate the tenancy on givg three calr months' notice to

Parties.

Agreement to let.

Parcels.

Term.

Rent.

(*a*) As to implying a covenant for quiet enjoyment in a tenancy from year to year, see *Schwartz* v. *Locket*, 38 W. R. 142; *Markham* v. *Paget*, [1908] 1 Ch. 697.

(*b*) The demise should not be "for one year and so on from year to year," as this would enure as a tenancy for two years at least: see *Doe* v. *Green*, 9 Ad. & El. 658; *Re Searle*, [1912] 1 Ch. 610.

If a tenant goes into possession during a quarter, and pays rent for the odd time up to the next quarter day, and thereafter he pays and the landlord accepts rent on the regular quarter days, there is a tenancy from year to year beginning at the first regular quarter day: *Doe* v. *Johnson*, 6 Esp. 10; *Croft* v. *Blay, Ltd.*, [1919] 2 Ch. 343.

As to the construction of agreements not to disturb the tenant if he pays the rent, see *Kusel* v. *Watson*, 11 Ch. D. 129; *Mardell* v. *Curtis*, [1899] W. N. 93; *Zimbler* v. *Abrahams*, [1903] 1 K. B. 577.

A licence to erect a hoarding on land does not create a demise of the land: *Wilson* v. *Tavener*, [1909] 1 Ch. 578; and see *Provincial Bill Posting Co.* v. *Low Moor Iron Co.*, [1909] 2 K. B. 344; *King* v. *Allen*, [1916] 2 A. C. 54.

(*c*) So far as the landlord is concerned this is qualified by the provisions of the Rent and Mortgage Interest (Restrictions) Acts, 1920 to 1925, which cannot be contracted out of in a case falling within those Acts.

quit, expirg on any of the sd quarter days (*d*), the landlord to pay all landlord's rates & taxes, & the tenant to pay all tenant's rates & taxes, *or*, "the tenant to pay all rates & taxes except landlord's ppty tax."

Option to tenant to take lease (*a*).

[PROVD ALWAYS & it is hby agrd that if at any time durg the tenancy hby created the tenant shl be desirous of havg a lease of the premes for a term of twenty-one yrs determinable by him at the end of the first seven or fourteen yrs & shl give the landlord a notice in writg to that effect then & in such case (provd the tenant shl have duly observed & pformed the agrmts on his pt hrinbfe contd up to the date of such notice) the landlord will grt to the tenant a lease of the premes accordgly for such term as afsd, the lease to be considered as commencg on, & the term to be computed from the —— day of ——, & to be at the same rent as is hrinbfe reserved & accordg to the form of lease wch has been produced to the tenant & signed by both the sd pties hto & wch is hrunto annexed, & from & after the date of the sd notice the agrmt hrinbfe contd for a tenancy of the premes from the sd —— day of —— shl be superseded & the premes shl thenceforth until the grtg of the sd lease be considered as held in all respts upon the terms of such intended lease, but so that the covts of the sd lease shl not be deemed to have any retrospective

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(*d*) Or "expiring at any time." See *Soames* v. *Nicholson*, [1902] 1 K. B. 157; *Dixon* v. *Bradford, &c., Society*, [1904] 1 K. B. 444; *Lewis* v. *Baker*, [1906] 2 K. B. 599. If the agreement is for a yearly tenancy, notice cannot be given to terminate it before the expiration of the first year: *Mayo* v. *Joyce*, [1920] 1 K. B. 824; but nothing prevents the parties from stipulating that the tenancy shall be determinable by a notice to quit shorter than the usual six months' notice, or that the notices to quit to be given by the landlord and tenant respectively shall be of unequal length, or that the tenancy shall be determinable by the one party only by notice to quit and by the other party either by notice to quit or in some other way: *Allison* v. *Scargall*, [1920] 3 K. B. 443; *Gray* v. *Spyer*, [1921] 2 Ch. 549; reversed, [1922] 2 Ch. 22. In the absence of agreement on this point a notice to quit a weekly or monthly tenancy must expire at the end of the weekly or monthly term: *Queens Club, &c., Ltd.* v. *Bignell*, [1924] 1 K. B. 117; *Precious* v. *Reedie*, [1924] 2 K. B. 149.

As to leases *in futuro*.

(*a*) If the day for the commencement of the lease is not more than twelve calendar months after the date of the agreement, the agreement may be entered into by a tenant for life: see S. L. Act, 1925, s. 42 (1), s. 90 (1) iii. As to contracts for granting leases *in futuro*, see *Gas Light & Coke Co.* v. *Towse*, 35 Ch. D. 519; *Re Lander & Bagley*, [1892] 3 Ch. 41; *ante*, p. 815, note (*p*).

operation in relation to the date of the sd notice.] [*If the house is intended to be sub-let on weekly tenancies add,* "THE landlord or any pson authorised by him may, if & when he thinks fit, as agent for & in the name of the tenant collect & give receipts for any rent payable to the tenant by any under-tenant or lodger with power for the landlord to retain any moys due to him out of the rent so collected."] AS WITNESS, &c.

II.

AGREEMENT *for Tenancy of a* COTTAGE *in the Country from* YEAR *to* YEAR (*b*).

PARTIES, as in Prec. I., p. 845. Parties.

1. THE LANDLORD agrees to let, & the tenant agrees to take, from the —— day of —— from yr to yr until the tenancy is determined as hrinar mentd, the cottage & garden ground situate in the Parish of ——, in the County of ——, in the occupon of ——, on the followg terms. Agreement to let.

2. THE RENT to be £—— p.a. payable quarterly on the usual quarter days in each yr, & the tenant to pay all the rates & taxes (except tithe & land tax). Rent, &c.

3. THE TENANCY to be determined at any quarter day on either party giving a previous quarter's notice in writg to the other of his intention to do so. Determination of tenancy.

4. THE TENANT to whitewash the cottage inside & out when required, and keep the garden in good cultivation and condition. Tenant to whitewash.

5. THE TENANT not to take any lodgers or allow any married son or daur to reside with him in the sd cottage witht the written consent of the landlord. Not to take lodgers.

AS WITNESS, &c.

(*b*) As to compensation for crops, &c., of cottage gardens, see Allotments Act, 1922, s. 3. As to compensation for improvements on holdings generally, see *post*, p. 933.

If the provision of a cottage for a workman employed in agriculture forms part of his remuneration, s. 1 of the Housing Act, 1925, is made applicable to the case by s. 2 of the same Act. As to the liability of a landlord for latent defects under s. 1, see the recent case of *Fisher* v. *Walters*, [1926] W. N. 155.

III.

AGREEMENT *for* TENANCY *from* YEAR *to* YEAR *of* PART *of a* HOUSE (*c*) *to be used as* OFFICES, *the* LESSORS *being a* COMPANY.

Parties. AN AGRMT made the —— day of ——, BETN the —— Co, Limd (hrinar called the landlords) of the one pt, & ——, of, &c. (hrinar called the tenant) of the other pt.

Agreement to let. **1.** THE LANDLORDS hby agree to let & the tenant agrees to take ALL THOSE rooms or offices on the —— floor of the bldg

Parcels (*a*). situate & being, &c., & numbered —— on the plan hto annexed, with the fixtures & fittgs specified in the schdle hto, & the appurts, togr with right of ingress, egress, & regress through the hall-door, entrance-hall, staircase & passages, from the ——

Term. day of ——, from yr to yr until the tenancy is put an end to at the end of the first or any subseqt yr (*b*) by either party on givg to the other —— calr months' previous notice in

Reservation of rent. writg, AT THE yrly rent of £——, & so in proportion for any fractional pt of a yr, to be pd by eql quarterly paymts on the —— day of ——, &c., *or*, "the four usual qtr days," the first paymt to be made on the —— day of ——, & the last to be made in advance one calr month bfe the expiron of the tenancy.

Tenant agrees— **2.** THE TENANT hby agrees with the landlords as follows:—

To pay rent. (i.) To pay the sd rent on the days & in mner afsd.

To keep in repair. (ii.) To keep the sd demised premes, includg the fixtures & fittgs throf, internally in good & tenantable repair & condon (reasble wear & tear & damage by fire or other accident only excepted), & in such repair & condon to deliver up the same, togr with all fixtures & fittgs, at the expiron of the tenancy.

To permit landlords to enter and view, and to repair on notice. (iii.) To permit the agents of the landlords to enter at all reasble times for the ppose of viewg the condon of the sd premes, & at his, the tenant's expse, to make good all defects

(*c*) A lease of this nature includes the outer walls so far as solely appropriated to the rooms let: *Carlisle Café Co.* v. *Muse*, 67 L. J. Ch. 53; *Hope Bros., Ltd.* v. *Cowan*, [1913] 2 Ch. 312; *Goldfoot* v. *Welch*, [1914] 1 Ch. 213; and see *Phelps* v. *City of London Corporation*, [1916] 2 Ch. 255.

(*a*) Where there are lavatories used in common by all tenants, add the forms at p. 874.

(*b*) See *ante*, p. 845, note (*b*).

thrin within one calr month after notice throf shl have been given or left upon the sd premes.

(iv.) Not to use the sd premes or any pt throf or suffer the same to be used as a dwelling or sleepg place or orwise than as offices, witht the consent in writg of the landlords, nor witht such consent to make any alteration whatsr thrin. Not to use as dwelling place.

(v.) Not to do or suffer to be done anything wch may be or grow to the injury or annoyce of the landlords or the other tenants or occupiers of the sd bldg, or wch may render the landlords liable to pay in respt of the sd bldg, or any pt throf, more than the ordinary or psnt rate of premium for insurce against fire, or wch may make void or voidable any poly for such insurce. Not to cause annoyance.

(vi.) Not to assn or underlet the sd premes or any pt throf witht the consent in writg of the landlords. Not to assign or underlet without consent.

(vii.) That the landlords shl have a right of re-entry on non-paymt of the rent for twenty-one days (whether legally demanded or not), or breach of any of the tenant's agrmts. Power of re-entry.

3. THE LANDLORDS hby agree with the tenant as follows :— Landlords agree for quiet enjoyment (*c*).

(i.) That the tenant, duly paying the rent & observg & pformg the agrmts hrinbfe contd, may peaceably hold the sd premes durg the period afsd without any disturbance by the landlords or any pson claiming under them.

(ii.) To pay all rates, taxes & outgoings whatsr, whether psnt or future, in respt of the sd bldg & premes, except gas or electric lightg rate, wch is to be pd by the tenant. To pay taxes.

(iii.) To keep the hall, staircase (*d*) & passages properly lighted. To keep lighted.

(iv.) To maintain & keep the [roof (*e*)] outside main walls & timbers of the sd bldg & the passages, stairs (*f*), & conveniences To keep outside, &c., in repair.

(*c*) As to this covenant, see *ante*, p. 814, note (*c*), and the cases there referred to.

(*d*) In the absence of this agreement the landlord is not bound to light: see *Huggett* v. *Miers*, [1908] 2 K. B. 278 ; *Lewis* v. *Ronald*, 101 L. T. 534.

(*e*) If the offices are at the top of the building this may be important. As to the liability of the lessor for disrepair of the roof, see *Hargroves* v. *Hartopp*, [1905] 1 K. B. 472 ; *Hart* v. *Rogers*, [1916] 1 K. B. 646 ; *Dunster* v. *Hollis*, [1918] 2 K. B. 795 ; *Cockburn* v. *Smith*, [1924] 2 K. B. 119.

(*f*) As to injury done to a stranger through want of repair, see *Miller* v. *Hancock*, [1893] 2 Q. B. 177 ; *Humphery* v. *Conybeare*, 80 L. T. 40 ; *Powell* v. *Thorndike*, 102 L. T. 600 ; and 52 Sol. J. 596 ; *Ryall* v. *Kidwell*, [1914]

intended for the common use of the occupants in good repair & in a clean, pper & sanitary condon, with power to enter on the sd premes for the pposes of this clause.

To provide water.

(v.) To provide at their own cost a sufft supply of water (*g*) for the premes.

As WITNESS, &c.

[*Schdle of fixtures and fittgs belongg to the landlords.*]

IV.

AGREEMENT *for* LEASE OF HOUSE *in* TOWN (*a*).

Parties.

AN AGRMT made the —— day of ——, BETN A., of, &c. (hrinar called the landlord, wch expression shl include, &c.,

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3 K. B. 135; *Dobson* v. *Horsley*, [1915] 1 K. B. 634; *Fairman* v. *Perpetual, &c., Society*, [1923] A. C. 74; overruling *Miller* v. *Hancock*, *sup.*; as to injury done to an employed decorator, see *Sutcliffe* v. *Clients, &c., Co., Ltd.*, [1924] 2 K. B. 746; or to the wife of a tenant, see *Groves* v. *Western Mansions*, 33 T. L. R. 76; *Cavalier* v. *Pope*, [1906] A. C. 428; *Cameron* v. *Young*, [1908] A. C. 176. As to the duty of the landlord in regard to the state of the demised premises generally, see *Lucy* v. *Bawden*, [1914] 2 K. B. 318.

(*g*) As to liability in case of an overflow, see *Blake* v. *Woolf*, [1898] 2 Q. B. 426; *Rickards* v. *Lothian*, [1913] A. C. 263.

As to agreements for leases.

(*a*) This precedent and the following one are inserted for use where the preparation of the lease itself must for any reason be deferred, but if the granting of the lease is not to be contingent on anything to be previously done by the tenant (such as the erection of buildings), it is better to dispense with a preliminary agreement and grant the lease at once, there being no difference in the stamp, and a tenant under an agreement for a lease being now practically a tenant for the whole term as if the lease had been actually granted, see *Walsh* v. *Lonsdale*, 21 Ch. D. 9; *Gilbey* v. *Cossey*, 106 L. T. 607; *Brown* v. *Evans*, 136 L. T. Newsp. 453. The L. P. Act, 1925, s. 146, applies where the lessee has become entitled to have his lease granted. But there is neither privity of contract nor privity of estate between the landlord and the assignees of an agreement for a lease who have neither executed the assignment nor entered into possession, and he cannot enforce against them any of the terms of the agreement: *Purchase* v. *Lichfield Brewery Co.*, [1915] 1 K. B. 184.

As to the effect of a collateral representation that adjoining houses are subject to restrictive covenants, see *Spicer* v. *Martin*, 14 App. Cas. 12; or that drains are in good order: *De Lassalle* v. *Guildford*, [1901] 2 K. B. 215; but cf. *Heilbut, Symons & Co.* v. *Buckleton*, [1913] A. C. at p. 50; as to sanitary condition and repairs, see *Whittington* v. *Seale-Hayne*, 82 L. T. 49; as to infection from illness, see *Collins* v. *Hopkins*, [1923] 2 K. B. 617. Generally as to the covenant for fitness of the premises demised, see Foa, 6th ed., 161 *et seq.*

see p. 778), of the one pt, & B., of, &c. (hrinar called the tenant, wch expression shl include, &c.), of the other pt.

Agreement to let.

1. THE LANDLORD agrees to grt & the tenant agrees to take a lease of ALL THAT messuage situate & being No. —— in —— street in the Parish of ——, in the County of ——, with the appurts throf, & the use of the fixtures now in [& intended to be fixed in] or about the sd messuage & premes & parlarly described in the schdle hto, FOR THE term of —— yrs from the —— day of —— (*b*), [determinable at the option of the tenant at the expiron of the first —— or —— yrs of the sd term on givg six calr months' previous notice in writg to the landlord,] AT THE yrly rent of £——, payable quarterly on the —— day of ——, &c., *or* "the usual quarter days," in every yr durg the sd term, witht any deduction except for [land tax &] landlord's ppty tax, the first paymt throf (amtg to £——) to be made on the —— day of ——, the tenant to pay & discharge all rates, taxes, [assessmts, impositions (*c*), & outgoings (*d*) whatsr, whether parliamentary, parochial, local, or orwise, wch are now or shl at any time durg the sd term be payable by landlord or tenant (*e*)] in respt of the sd premes or any pt throf except [land tax &] landlord's ppty tax (*f*).

Parcels.

Term.

Reservation of rent.

Lease to contain covenants.

To pay rent, &c.

To paint.

2. THE LEASE shl contain covts on the pt of the tenant: To pay the rent & all rates, taxes, assessmts, & outgoings except as afsd: To paint the external wood & iron-work, & other pts previously painted with two coats of good oil colour, & clean & colour the external pts usually coloured once in every three yrs [at the same time as & to correspond with the adjoing houses], & to paint the inside with two coats of good oil colour once in every seventh yr: To keep the sd premes & the fixtures thrin durg the term, & to yield the same up at the expiron throf in a perfect & tenantable state of repair: To permit the landlord to enter & inspect the state of repair & to repair on notice: NOT to assn or underlet the premes witht the consent in writg of the landlord [provd that such consent

To keep in repair.

Permit landlord to enter and view.

Not to assign,

(*b*) The day on which the term is to begin should be stated, see *Marshall* v. *Berridge*, 19 Ch. D. 233; *Edwards* v. *Jones*, 124 L. T. 740.

(*c*) See *Foulger* v. *Arding*, [1902] 1 K. B. 700.

(*d*) As to outgoings, see Foa, 6th ed., 217; Woofall, 21st ed., 719.

(*e*) See *ante*, p. 789, note (*e*).

(*f*) As to this tax, see *ante*, p. 785, note (*c*).

&c., without consent. shl not be withheld to an assnmt or underlettg to a respectable & responsible pson] : Not to make any alteration in the premes witht such consent as afsd : [Not to use the same or any pt throf orwise than as a private dwelling-house : Not to exhibit any bill or placard on or about the premes intimatg or givg notice that any pt less than the whole of the sd premes is or will be to let : Not to put up in or upon or affix to any pt of the premes any writg or notificon of any profession, trade, or business whatsr : Not to allow any sale by auction upon the premes witht such consent as afsd : To insure in the sum of £—— at the least, *or*, "to the full value," *or*, "to three-fourths of the full value," in the —— office or some other responsible office in London or Westminster in the joint names of the landlord & tenant, & to produce the policy & receipt for the last premium when required, & in the event of fire forthwith to lay out the amt reced from the insurce office in reinstatg the premes, & to make good any deficiency out of the tenant's own moys] : [And all other reasble covts wch are commonly contained in the leases on the —— Este (*a*), *or*, "to be determined in case of dispute by the landlord's solor "].

Not to alter.

To use as private house only.

Not to let lodgings.

Not to use for trade or profession.

Not to hold sales by auction.

To insure.

Other usual covenants.

Landlord to insure. **3.** [*If the landlord insures, add in lieu of the above provision for insurance,* "The landlord shl insure the sd house & premes against fire in a responsible office in London or Westminster [& the expse throf to be pd by the tenant to the landlord on demand] & in the event of fire the amt reced from the Insurce Office to be forthwith laid out in reinstatg the premes.]

Power of re-entry (*b*). **4.** The landlord shl have a right of re-entry on non-paymt of the rent (whether legally demanded or not) for twenty-one days after the same shl have become due, or on breach of any of the tenant's covts.

Lease to be executed on demand. **5.** The landlord shl, whenever required, execute, & the tenant shl whenever required, accept & execute a counterpt of a

(*a*) This is better than saying "usual" covenants. As to what are usual covenants, see 27 Sol. J. 129, 142, 159, 177 ; Stroud, 2nd ed., 2155 ; Fawcett, L. & T., 3rd ed., 154; Foa, 6th ed., 434 *et seq.; Hampshire* v. *Wickens*, 7 Ch. D. 555 ; *Crosse* v. *Morgan*, 60 L. T. 703 ; *Re Lander & Bagley*, [1892] 3 Ch. 41 ; *De Soysa* v. *De Pless Poll*, [1912] A. C. 194 ; *ante*, p. 806, note (*k*).

(*b*) See *ante*, p. 817, note, and p. 819, note (*d*).

lease of the premes upon the terms & condons afsd, such lease & counterpt to be prepared by the solor of the landlord at the expse (*c*) of the tenant [not exceedg £——, exclusive of stamp duty, *or*, " the scale charge "], & the landlord's title shl not be required to be shown (*d*).

6. UNTIL THE sd lease is executed the sd pties shl be bound by the covts & provons hrinbfe mentd & agrd to be contained in such lease as if the same were actually executed. Until execution covenants in lease to be binding.

AS WITNESS, &c.

[*Schdle of fixtures.*]

(*c*) See Elph. Introd., 7th ed., 301; 45 Sol. J. 355; *Re Gray*, [1901] 1 Ch. 239; *Lock* v. *Furze*, 19 C. B. (N. S.) 96.

(*d*) By L. P. Act, 1925, s. 44, sub-ss. (2), under a contract to grant a lease or underlease for years the lessee is precluded from calling for the title to the freehold, but in the case of an underlease is not precluded from calling for the lessor's leasehold title. By the same section, sub-s. (4), under a contract to grant a lease, where the lessor holds by underlease (so that the lease is a sub-sub-lease), the lessee is precluded from calling for the title to the head lease, but not from calling for the sub-lease, see *Gosling* v. *Woolf*, [1893] 1 Q. B. 39; the effect being that an intending underlessee may always, unless barred by the contract, call for the lease under which his lessor immediately holds. Title to be shown on contract to grant lease or underlease.

An agreement for a lease of land with an easement is, as well as to the easement as the land, an agreement for a lease of land, and falls within s. 44, sub-s. (2), of the L. P. Act, 1925: *Jones* v. *Watts*, 43 Ch. D. 574.

By the S. L. Act, 1925, s. 90 (4), a contract for a lease under that Act is not to form part of the title to the lease when granted; and by the L. P. Act, 1925, s. 44 (9), the same is enacted as to all leases under powers.

V.

AGREEMENT *for* UNDERLEASE *of* HOUSE *in* TOWN, VARIATIONS *where other* PROPERTY *is comprised in the* HEAD LEASE (*e*), *and where* LICENCE *of the* LANDLORD *is required.*

Parties.

PARTIES, as in Prec. IV., p. 850.

Agreement to let. Parcels.

1. THE LANDLORD agrees to grt & the tenant agrees to take(*f*) a lease of ALL THAT messuage, &c., situate & being, &c., in

As to frame of underleases.

(*e*) In framing underleases the express obligation must, of course, be imposed on the underlessee of observing such of the covenants of the head lease as must necessarily be observed by the tenant in possession to prevent a forfeiture, such as covenants relative to the mode of using the premises; and the covenants of the underlease should be so framed as to arm the lessor with the means of seeing that the covenants of the head lease, so far as they are to be imposed on the underlessee, are duly performed, and of enforcing such performance by action, with the right of re-entry in default. The proper and usual course is to repeat such of the superior covenants as are to be performed by the underlessee *verbatim*, or (to save expense where the superior lease is too lengthy) in substance, with the necessary modifications; thus if the head lease contains a covenant by the lessee to repair on notice, the underlease should contain a covenant by the underlessee to repair on notice given either by the head lessor or sub-lessor, and the right of entry to view the condition of the premises and any other similar right should be reserved both to the head lessor and sub-lessor. And it is sometimes desirable to add a general covenant for the performance and observance by the underlessee of all the covenants of the head lease, so far as they relate to his premises, except the covenant for payment of rent, and any others intended to be excepted; and (in order that the loss of the head lease, and not merely the immediate damage arising from the breach of the particular covenant, may be the measure of damages in an action against the underlessee for causing the forfeiture of the head lease) an express covenant not to do anything whereby the head lease may be forfeited. Under an open contract for the grant of an underlease, the proposed underlessee is not bound to enter into unusual covenants such as are contained in the head lease unless he has had the fullest opportunity of ascertaining what those covenants are: *Melzak* v. *Lilienfield*, [1926] 1 Ch. 480. An underlessee of part of demised property could not obtain relief under s. 14 of the C. Act, 1881, against forfeiture for breach of a covenant contained in the head lease: *Burt* v. *Gray*, [1891] 2 Q. B. 98. But such relief was obtainable under the C. Act, 1892, s. 4, and can now be obtained (see L. P. Act, 1925, s. 146 (4) (5)) by means of an order vesting in the underlessee the whole term of the lease. On the other hand

Licence of landlord.

(*f*) If the licence of the superior landlord to the underlease has to be obtained, add here:—"subjt to the licence of the superior landlord being obtained at the cost of the tenant, & provd the same can be obtained witht paymt of any fine or conson."

the Parish of ——, in the County of ——, with the appurts throf, wch are held [togr with other ppty] by the landlord under a lease (hrinar called the head lease) dated, &c. [TOGR WITH the fixtures described in the schdle hto, & all other (if any) fixtures now in or about the sd messuage & premes], FOR THE term of —— yrs from the —— day of ——, AT THE rent, &c., *see last prec.* Term (*a*).

2. THE LEASE shl [be subjt to the reservons followg (namely) : *here specify reservons in head lease*, & shl] contain covts by the tenant, &c., *here specify covts in the head lease with the variations indicated in the note, last page, & any further covts required* [*or*, shl contain covts by the tenants similar to those contained in the head lease [so far as the same are applicable to the premes] with the variations rendered necessary by the difference in the circes, & so that the landlord or the superior landlord, as the case may require, shl be named as the pson to give any notice or consent thrin mentd (*b*), & with the exception of the covt for paymt of rent, &c., *here specify any covts wch are inappropriate*] AND SHL also contain covts by the tenant, [*here specify any covts not contd in the head lease,*] & a covt to observe & pform & to indemnify the landlord against the covts of the head lease so far as the same are applicable to the premes other than the covt for paymt of rent [& the other covts hrinbfe excepted,] & a covt not to do, omit, or suffer anything whereby the head lease may be forfeited, & also a covt to allow the landlord to enter

Lease to contain covenants similar to those in head lease.

(unless the underlease is at a rack-rent), it is proper that the sub-lessor should covenant to pay the ground rent, and perform such others (if any) of the covenants of the head lease as are to be performed by him, and also to produce the head lease, and (if the latter comprises other property) to perform the covenants thereof, so far as they relate to such other property ; see Elph. Introd., 7th ed., 352 ; *Haywood* v. *Silber*, 30 Ch. D. 404. The burden of such of the positive covenants as relate to such other property and do not "touch or concern" the land demised does not bind the assigns of the sub-lessor : *Dewar* v. *Goodman*, [1909] A. C. 72.

As to the effect of a breach by the underlessee of restrictive covenants in the head lease, see *Hall* v. *Ewin*, 37 Ch. D. 74; *Powell* v. *Hemsley*, [1909] 2 Ch. 252 ; *Berton* v. *Alliance Co.*, [1922] 1 K. B. 742 ; *Atkin* v. *Rose*, [1923] 1 Ch. 522.

(*a*) See *ante*, p. 851, note (*b*).

(*b*) See *Williamson* v. *Williamson*, L. R. 9 Ch. 729 ; *Haywood* v. *Silber*, 30 Ch. D. 404, which show the desirability of specifying the particular covenants to be included or excluded.

on the premes & to pform thron any covts wch may be necessary to prevent a forfeiture of the head lease.

Power of re-entry.

3. THE LANDLORD shl have a right of re-entry on non-paymt of the rent for twenty-one days after the same shl have become due (whether legally demanded or not), or for the breach of any of the tenant's covts.

Landlord's covenants

4. THE LANDLORD shl enter into the usual qualified covt for quiet enjoyment [& to covt for paymt of the ground rent & to observe & pform the covts of the head lease wch are hrinbfe excepted, & all the covts of the head lease with respt to the ppty thrin comprised & not hby agrd to be demised, & for production of the head lease].

5. THE LANDLORD when required shl execute, &c., *continue as in last Precedent, forms* **5** *&* **6**.

AS WITNESS, &c.

[*Schdle of fixtures.*]

VI.

AGREEMENT *for Letting a* FURNISHED HOUSE (*a*).

Parties.

PARTIES, as in Prec. I., p. 845.

Agreement to let.

1. THE LANDLORD agrees to let, & the tenant agrees to take THE DWELLING-HOUSE & premes, situate & being No. ——, in

(*a*) The entirety of the rent issues out of the house, see Foa, 6th ed., 124. Where therefore a furnished house is let for a term, it may be convenient to provide that "although as betn the lessor & lessee the whole of the sd rent of £—— issues out of the demised dwelling house & premes, still after the death of the lessor such rent shl be deemed to be apportioned as to £—— (pt throf) in respt of the demised dwelling house & premes & as to £—— (residue throf) in respt of the demised furniture, but so that the lessee shl not be affected by such apportionmt, & that the receipt of the owner of the reversion expectant on the term hby grted in the demised dwelling house & premes shl be an effectual discharge for the whole of the sd rent of £——." As to the apportionment of the rent where a mortgagor and a mortgagee of a house let at an inclusive rent the house with furniture in which the mortgagee had no interest, see *Hoare* v. *Hove Bungalows, Ltd.*, 56 Sol. J. 686.

As to

There is an implied warranty on letting a furnished house that it is fit

—— street, in the Parish of ——, in the County of ——, furnished as stated in the inventory contained in the schdle hto, FOR A term of —— [calr months] commencg on the —— day of ——, & ending on the —— day of ——, AT THE [monthly] rent of £—— on posson being taken, £—— on the —— day of ——, &c. Parcels. Term. Reservation of rent.

2. THE TENANT AGREES ; Tenant agrees—

(i.) To pay the sd rent to the landlord in mner afsd. To pay rent.

(ii.) To replace & make good all breakages, deficiencies, & damage to the furniture, fixtures, fittings, & effects in the sd dwelling-house & premes, wch may happen durg the period of his tenancy (except reasble use & wear & damage by accidental fire). To replace breakages, &c.

(iii.) At the expiron of the sd tenancy, to deliver up to the landlord posson of the premes with the whole of the sd furniture & effects accordg to the sd inventory, & in the same rooms in wch the same now are, in as sound, perfect & clean To deliver up in same condition.

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for habitation (*e.g.*, free from vermin or contagion, properly drained, &c.) : *Smith* v. *Marrable*, 11 M. & W. 5 ; *Wilson* v. *Finch-Hatton*, 2 Ex. D. 336 ; 28 Sol. J. 529 ; *Collins* v. *Hopkins*, [1923] 2 K. B. 617, but not that it shall so continue : *Sarson* v. *Roberts*, [1895] 2 Q. B. 395, or that vermin, such as rats, coming in from outside shall be totally excluded : *Stanton* v. *Southwick*, [1920] 2 K. B. 642. As to the statutory condition implied in contracts for letting for habitation dwelling-houses at rents not exceeding in London £40 and elsewhere £26, *see* the Housing Act, 1925, s. 1, and note (*c*), p. 812, *supra*. There is no implied warranty in an ordinary lease of a house or buildings that the premises are fit for the purpose for which they are to be used : see *Manchester, &c., Co.* v. *Carr*, 5 C. P. D. 507 ; *Murray* v. *Mace*, 8 Ir. R. C. L. 396 ; or that they are reasonably fit for habitation or occupation : see *Hart* v. *Windsor*, 12 M. & W. 68 ; except in cases falling under the Housing Act, 1925, s. 1 : see *Walker* v. *Hobbs*, 23 Q. B. D. 458. The condition and undertaking implied by that Act do not apply where a house is let for a term of not less than three years upon the terms that it be put by the lessee into a condition reasonably fit for habitation, and the lease is not determinable at the option of either party before the expiration of three years ; but, except as above mentioned, apply notwithstanding any agreement to the contrary, and are extended by s. 2 to the case of houses occupied by workmen engaged in agriculture where the provision of a house or part of a house forms part of the remuneration of the workman. An action for a breach of the statutory provision, as for a breach of an express contract to repair by the landlord (*Cavalier* v. *Pope*, [1906] A. C. 428), can only be brought by the tenant : *Ryall* v. *Kidwell*, [1914] 3 K. B. 135 ; *Middleton* v. *Hall*, 108 L. T. 804. implied warranty.

There is no implied warranty that a tenant of furnished rooms is a proper person to occupy them and is not suffering from an infectious disease : *Humphreys* v. *Miller*, [1917] 2 K. B. 122.

a condon as at the commencemt of the sd tenancy (except as afsd).

To pay for cleansing and washing (*b*).

[(iv.) To pay for the cleansing of the premes or such pt throf as may require cleansing & for the washing of such articles as may require washing.]

To give notice of infectious diseases.

[(v.) In the event of any infectious disease wch may require notification by virtue of any Statute or order made thrunder, happeng in the sd house durg the sd tenancy, to give written notice throf, & any other information wch may be required relative thereto, to the landlord or his agent, bfe or immedly upon the expiron of the tenancy, & to pay to the landlord the expses of disinfectg the premes, & replacg any articles & things the destruction of wch may be rendered necy by such illness, or may be injured by such disinfectg, & in case of default in givg such notice as afsd, to pay to the landlord in addition the sum of £—— as liquidated damages (*c*).]

Not to assign, &c.

(vi.) Not to assn, underlet, or pt with his intt under this agrmt witht the written consent of the landlord.

Landlord to pay superior rent, &c.

3. The landlord agrees to pay the superior rent & all rates [includg water rate], taxes, insurce [assessmts, impositions], & other outgoings (*d*) payable in respt of the premes durg the sd tenancy, except paymts for gas & electricity, wch are to be pd by the tenant.

Power of re-entry (*e*).

4. In case of non-paymt of rent or breach of this agrmt by the tenant, the landlord shl be at liberty to re-enter & take posson of the premes, witht prejudice to his right to recover all rent then in arrear & any damages for breach of this agrmt.

As witness, &c.

[*Schdle of furniture.*]

(*b*) See Public Health Act, 1925, ss. 45, 46.

(*c*) See the Infectious Disease (Notification) Acts, 1889 and 1899, and the Infectious Disease (Prevention) Act, 1890, ss. 2, 7; and as to London in particular, the Public Health (London) Act, 1891, ss. 55, 65, 142, and Fourth Sched.

(*d*) See *ante*, p. 811, note (*b*).

(*e*) See *ante*, p. 817, note, and p. 819, note (*d*).

VII.

AGREEMENT *for Letting* FURNITURE, *&c., to Hire* (*a*).

AN AGRMT made the —— day of ——, BETN A., of, &c., of the one pt, & B., of, &c., of the other pt. Parties.

1. THE sd A. shl let to hire to the sd B., THE FURNITURE, fixtures, goods, & effects, set forth in the schdle or list hrunto annexed (wch are now in, upon, or about the house & premes known as, &c., in the occupon of the sd B., but are the ppty of the sd A.), AT THE RENT of £—— per calr month, & so in proportion for any less period than a month, to be pd by the sd B., to the sd A., on the —— day of —— in every month, the first monthly paymt throf to be made on the —— day of —— next. Agreement to let. Reservation of rent.

2. THE SD B. hby agrees with the sd A., at all times durg the sd lettg to hire of the sd effects, to keep the same in a good & perfect state of repair & condon in every respt & insured against fire to their full value in some respectable office, & whenever required, to produce the policy of such insurce & the receipt for the last premium to the sd A., & also to replace such of the sd effects as may be broken, destroyed, or damaged (by whatsr means), with other articles of eql value, & not to remove the sd effects or any pt throf from the sd house & premes, nor to underlet, lend or pt with the posson of the same (either directly or indirectly) to any pson or psons whomsr witht the previous written consent of the sd A., nor allow the same to be taken under a distress. Tenant to keep in repair. Insurc. Replace broken furniture. Not to remove or part with furniture, &c.

3. THE SD A. may at any time witht givg any previous notice [*or* "on giving —— days' notice"] to the sd B., put Power of re-entry

(*a*) As to the stamp, see Stamp Act, 1891, First Sched., heading Bond, Covenant, or Instrument of any kind whatsoever. In the precedent the sum is made payable every month for an indefinite period, and would seem to require a duty of *2s. 6d.* for every £5 or fractional part of £5, paid each month: see *Clifford* v. *I. R. Commrs.*, [1896] 2 Q. B. 187; *Jackson* v. *I. R. Commrs.*, 87 L. T. 269. The case would be different if the rent was a yearly rent payable by monthly instalments: see *Lewis* v. *I. R Commrs.*, [1898] 2 Q. B. 290. The stamp is the same whether the agreement is under seal or under hand only: *National Telephone Co., Ltd.* v. *I. R. Commrs.*, [1900] A. C. 1. Stamp.

without notice (*b*).

an end to the sd lettg to hire, & may thrupon enter upon the premes or any pt throf, & remove & carry away the sd effects

As WITNESS, &c.

[*Schdle.*]

VIII.

LEASE *of a* DWELLING-HOUSE *in a* TOWN *for* TWENTY-ONE YEARS, *with* ORDINARY COVENANTS. VARIATIONS *where the* HOUSE *is to be used as a* SHOP, *when it is situate in a* PRIVATE ROAD, *or in a* SQUARE, *where the* LEASE *is* DETERMINABLE *by* LESSOR *or* LESSEE *or* BOTH, *where the* LESSOR *is to* INSURE, *and where the* LESSOR *has other* PROPERTY ADJOINING (*c*).

Parties. THIS LEASE, made the —— day of ——, BETN A., of, &c. (hrinar called the lessor, wch expression shl include, &c., *see* p. 778), of the one pt, & B., of &c. (hrinar called the lessee, wch expression shl include, &c., see p. 779), of the other pt,

Witnesseth. WITNESSETH that in conson of the rent[s], covts & condons

Demise. hrinar reserved & contained & on the pt of the lessee to be

Parcels. pd, observed, & pformed, the lessor doth hby demise unto the lessee ALL (*d*) THAT messuage or tenemt situate & known as No. —— in —— Road ["Street" *or* "Square"] in the

Habendum. Parish of ——, in the County [City] of —— (*a*), TO HOLD the same UNTO the lessee from the —— day of —— for the term of twenty-one yrs [determinable as hrinar mentd], *Reservon of rent*, p. 784, [*if lessor insures at expense of lessee add insurce rent*, p. 786] *if so agreed, improvement & penal rents*, p. 787.

(*b*) The licence to enter is not assignable by the lessor: see *Brown* v. *Metrop., &c., Socy.*, 1 El. & El. 832; *Re Davis & Co.*, 22 Q. B. D. 193.

(*c*) For variations for leases granted under powers and for several lessors and lessees, and other special cases, see "LEASES, MISCELLANEOUS."

(*d*) For other forms of parcels, see *ante*, p. 481, f. 3, and p. 780. For addition where use of public garden is included, see *ante*, p. 781.

(*a*) If the house is situate in a private road, add here, "togr with, &c.," *right of way*, p. 781, f. **7**. Where adjoining property belongs to the vendor, insert here, *reservon of right of drainage*, p. 782, and if proper, *reservon of general rights & right to rebuild or repair adjacent buildings*, p. 783, f. **6**.

Lessee's covenants.

And the lessee hby covts with the lessor (*b*) in mner followg, that is to say :—

1. *To pay rent*, p. 788, f. **3.**

2. *To pay rates, taxes, & outgoings*, p. 789, f. **4.**

3. *To paint outside*, p. 791, f. **8.**

4. *To paint inside*, p. 791, f. **9.**

5. *To keep in repair*, p. 792, f. **11** (*c*).

6. *To deliver up at end of tenancy in good repair* p. 795, f. **17.**

7. *To permit lessor to enter & view, & to repair on notice*, p. 797, f. **19.**

[8. *Power to lessor to repair on default of lessee*, p. 796, f. **21]** (*d*).

[9. *To insure & rebuild in case of fire*, p. 797, f. **26]** (*e*).

10. *Not to make alterations in premes*, p. 800, f. **33** (*f*).

(*b*) The covenants may be somewhat shortened by numbering them and proceeding from here as follows, the consequential alterations being made throughout: that the lessee will at all times durg the sd term, *or* "tenancy," duly observe & pform all the covts & provons followg, &c."

(*c*) If the landlord is to do the outside painting and repairs, omit the covenant by the lessee to paint outside; and at the end of the covenant to keep in repair, add the words, "except such repairs as are hby agrd to be executed by the lessor," and insert among the lessor's covenants the covenant *to paint outside*, p. 791, *& to repair outside*, p. 812.

(*d*) Where the property is situate in a private road or square, add here, *covt to pay proportion of expense of maintaing roads, sewers, &c.*, p. 794, f. **15**, *or square*, p. 794, f. **16**, *mutatis mutandis*. Where adjoining property belongs to the lessor, insert, if required, *power to lessor to enter to repair adjoing premes*, p. 797, f. **23.**

(*e*) If the lessor is to insure, this covenant will be omitted, and if so agreed substitute the covenants, *to repay the lessor the sums pd for insurance*, p. 797, f. **25**, and *not to do anything to increase the rate of insurance*, p. 799, f. **28.** If the house is to be used as a shop, add, if so agreed, the provisions, *for insurance of the windows against accident*, p. 798, note (*b*).

(*f*) If adjoining property belongs to the lessor, insert here if required, *covt to use as private dwelling-house only*, p. 803, f. **39**, *not to do any act to the damage or annoyce of the lessor or his tenants*, p. 804, f. **43**, *to permit lessor to lay down gas & water-pipes, &c., in connection with adjoing ppty*, p. 809, f. **50.** If the house is to be used as a shop, instead of the covenant to use as a private house, insert if required *covt not to carry on offensive trades*, p. 804, f. **41.**

11. *Not to create nuisance*, p. 804, f. **43**.

12. *Not to assign [or underlet] without licence*, p. 806, f. **47**.

[13. *To give notice of assignmts*, p. 809, f. **48**.**]**

Lessor's covenants.

And the lessor hby covts with the lessee in mner followg, that is to say :—

1. *To insure & rebuild in case of fire*, p. 813, f. **7**.

2. *For quiet enjoyment*, p. 814, f. **10**.

Proviso for cesser of rent on destruction by fire, p. 820, f. **5**. **[***Power to lessee or lessor or both to determine lease at end of first seven or fourteen yrs*, p. 825, f. **12**.**]** *Proviso for re-entry*, p. 817, f. **1**.

In witness, &c.

IX.

LEASE *of a* Residential Flat (*g*).

Recitals.

Parties as in Prec. VIII., p. 860.

Whas the lessor being este owner in fee simple of the house

(*g*) The precedent in the text is adapted to first-class flats, and will in many cases require modification. It is framed so as to enable the tenant of one flat to enforce in equity the negative stipulations (which are contained in the schedule of regulations) against the other tenants: see *ante*, p. 354, note.

The tenant can enforce against the assigns of the lessor his negative covenants, whether they relate to the property demised or not. He can also enforce against the assigns of the lessor all the covenants (whether positive or negative) relating to the property demised, but not the positive covenants (such as the covenant to light the staircase) which are mere collateral covenants. To obviate this inconvenience a proviso has been inserted that where the lessee gives notice to the lessor of breach of covenant and default is made in performing the covenant the rent is to be suspended until it is performed. As to the liability of a lessor to a lessee under the covenant for quiet enjoyment in respect of Acts done by another lessee, see *Malzy* v. *Eicholz*, [1916] 2 K. B. 308. Unless an agreement for the lease has been duly stamped with an *ad valorem* stamp, in which case the lease will only require a 6*d*. stamp, the lease should bear an *ad valorem* stamp. As to the liability of the landlord, in the absence of an express covenant to repair, for non-repair of those parts of the building which remain in his occupation and under his control, see *Miller* v. *Hancock*, [1893] 2 Q. B. 177; *Hargroves* v. *Hartopp*, [1905] 1 K. B. 472; *Huggett* v. *Miers*, [1908] 2 K. B. 278; *Dobson* v. *Horsley*, [1915] 1 K. B. 634; *Hart* v. *Rogers*, [1916] 1 K. B. 646; *Meller* v. *Holme*, [1918] 2 K. B. 100; *Dunster* v. *Hollis*, [1918] 2 K. B. 795; *Fairman* v. *Perpetual, &c. Society*, [1923] A. C. 74; overruling *Miller* v. *Hancock, sup.*; *Cockburn* v. *Smith*, [1924] 2 K. B. 119; and cf. *Lucy* v. *Bawden*, [1914] 2 K. B. 318.

Stamps.

Liability of landlord for repair of premises under his control.

(hrinar called the mansion) situate & known as No. ——, —— Street, in the Parish of ——, is desirous of letting pts throf in flats subjt to the regulons contained in the first schdle hto to the intent that the tenant for the time being of any flat may enforce the observance by the tenant of every other flat for the time being of the sd regulons. NOW THIS DEED WITNESSETH as follows:— Witnesseth.

1. In psuance, &c., & in conson, &c., p. 780, f. **1**, the lessor hby demises to the lessee All those several rooms, bath-room, & servants' offices known as flat No. ——, on the —— floor of the mansion, & also the coal cellar No. —— in the basemt of the mansion (wch flat & cellar are hrinar referred to as the flat & the cellar resply) togr with the user in common with the lessor & his other tenants of the entrance hall, staircases, lifts & passages (*a*) leading to the flat & cellar & also of the gas & water-pipes & electric wires in the mansion for the service of the flat & cellar with the benefit (in common with the other psons entitled thereto) of any covt or agrmt entered into by a lessee or tenant of any other flat or cellar in the mansion with the lessor for the observance of the sd regulons. *For a flat on the top floor,* "Except & reserving to the lessor the roof over the flat"; *if the coal cellar is under the street,* "& over the cellar." Except & reserving to the lessor & his other tenants the free & uninterrupted passage of gas, water & electricity through the pipes & wires wch now are or may at any time hrafter be in, on, or passing through the flat or cellar with power to the lessor, his servants & workmen at all reasonable times to enter the flat & cellar for the ppose of inspecting, repairing, placing, or altering the sd pipes & wires & the meters hrinar mentd & also of painting & repairing the outside wood and iron work & the exterior walls & roof of the mansion and so that such inspections, repairs or alterons shl be done with despatch & that the lessor shl make good all damage done in doing the sd inspection or repairs or alterons to the flat or cellar & to all decorations, fixtures & movable chattels thrin. *Habendum,* p. 784, f. **1**, "subjt to the burden of the covts or agrmts already Parcels.

(*a*) A mandatory injunction has been granted to reinstate a staircase, the removal of which rendered the tenant's access to his rooms less convenient: *Allport* v. *Securities Corporation*, 64 L. J. Ch. 491.

entered into by the lessor with the lessee or tenant of any other flat or cellar in the mansion for the observce of the sd regulons." *Reddendum*, p. 784, f. **1**. And also as an additional rent payable on such quarter day the sums (if any) wch shl become payable by the lessee under his covts hrinar contained as to electrical & gas meters & the supply of electricity & gas to the flat & cellar.

Payments for gas and electricity reserved as additional rents (*b*).

2. THE LESSEE hby covts with the lessor in mner followg. that is to say :—

(i.) *To pay rent*, p. 788, f. **3**.

To pay for gas and electricity.

(ii.) That the lessee will on each such quarter day pay to the lessor £—— for the hire of each electrical meter & £—— for the hire of each gas meter for the time being used for the flat or cellar & will pay for all gas or electricity supplied to the flat or cellar & not previously pd for at the same rate that the lessor may pay for gas or electricity supplied to the mansion. PROVD THAT the amt of gas or electricity supplied to the flat or cellar shl be determined by such meter or meters as the lessor shl for the time being think pper. Such meter or meters shl be supplied by the lessor & used, maintained & placed in such positions & pts of the mansion or flat or cellar as the lessor shl from time to time determine at the cost of the lessee. Provd that, *&c., continue provision for faulty meter*, p. 81, f. **7**, *saying* "lease" *instead of* "agrmt," "the lessee" *instead of* "consumer," & "gas or electricity" *for* "energy."

To repair.

(iii.) That the lessee will from time to time & at all times during the term hby grted well & substantially repair, cleanse, maintain, amend & keep the inside of the flat & cellar & the landlord's fixtures thrin (unless the same shl be destroyed or damaged by fire, explosion, or any other means not arising from the act or default of the lessee or of any pson being a servant of the lessee or being in the flat or cellar with his express or implied permission) & in parlar will as occasion requires thoroughly sweep all chimneys & flues used for the flat and cellar & clean all windows & all cisterns, boilers & water pipes & keep all ball cocks & pipes, gas pipes & electric wires in the flat or cellar in good order & condition.

(iv.) *To permit lessor to enter & view & to repair on notice*, p. 796, f. **19**.

(*b*) See *ante*, p. 786, note (*g*).

(v.) *To permit lessor to enter to repair adjoining premises,* p. 797, f. **23**, *saying* "premes" *for* "messes."

(vi.) *Not to cut main walls,* p. 802, f. **36**.

(vii.) *Not to assign or underlet,* p. 806, f. **47**.

(viii.) *To give notice of assignmt or underlease,* p. 809, f. **48**.

(ix.) *Not to do anything to increase rate of insurance of the mansion,* p. 799, f. **28**, *saying* "insurce of the mansion" *for* "insurce of the premes."

(x.) That the lessee will not waste or permit any water to be wasted in the flat.

(xi.) *To paint inside every five years,* p. 791, f. **9**.

(xii.) *To deliver up at end of tenancy,* p. 795, f. **17**.

Covenant to observe regulations.

3. THE LESSEE hby covts with the lessor that the lessee will at all times durg the term hby grted observe the regulons specified in the first schdle hto.

4. THE LESSOR hby covts with the lessee in mner followg, that is to say:—

(i.) *For quiet enjoyment,* p. 814, f. **10**.

(ii.) *To pay rates & taxes,* "including water rates," p. 811, f. **3**, *adding after* "premes" "as part of the mansion or otherwise."

(iii.) *To repair,* p. 812, f. **6**.

To supply gas, electricity, and water.

(iv.) That the lessor will supply such electricity & gas as the lessee may reasonably require to the flat & cellar & will affix & maintain pper meters to measure the same AND WILL provide & maintain a proper supply of hot & cold water to the flat, the hot water being heated between the hours of 6 a.m. & 11 p.m. to at least 130 degrees Fahrenheit, but the lessor shl not be liable to the lessee for any failure in the supply of electricity, gas, or water that shl happen from any cause not under his control.

To keep servants (*a*).

(v.) That the lessor will keep servants who shl at the expense of the lessor pform the services specified in the second schdle hto. All other services pformed by the servants at the request of the lessee shl be pd for by the lessee.

To indemnify

(vi.) That the lessor will indemnify the lessee against all loss

(*a*) The remedy for a breach of this covenant is in damages, not specific performance: *Ryan* v. *Mutual Tontine, &c.*, [1893] 1 Ch. 116; *Barnes* v. *City of London Real Property Co.*, [1918] 2 Ch. 18. The obligation is one with reference to the subject-matter of the lease and binds the lessor's assigns: *Ibid.*

the lessee against loss caused by servants.

or damage to the lessee caused by the act or default of such servant done or made in the pformce of the services specified in the second schdle hto.

To provide place for storage of perambulators, &c., and to permit telephone wires to be affixed to mansion.

(vii.) That the lessor will provide a pper place for the storage of invalid carriages, bath-chairs, perambulators & mail carts used by the lessee & if the lessee shl require a telephone in the flat allow the servants of H.M. Post Office to affix, repair & maintain pper wires to any pt of the mansion in the posson of the lessor.

To keep entrance hall, &c., lighted.

(viii.) That the lessor will keep the entrance hall, staircases, passages and lifts properly lighted.

(ix.) That every lease or tenancy agrmt of a flat or cellar in the mansion hrinar granted by the lessor, his hrs or assns, shl contain regulons to be observed by the lessee or tenant throf similar to those contained in the first schdle hto.

To insert regulations in leases of other flats.

5. THE LESSOR hby covts with the lessee that the lessor as to the pts of the mansion retained by him or wch may come into his posson by the determination of the lease of any pt of the mansion, will at all times durg the term hby granted observe & pform the regulons specified in the first schdle hto.

To observe regulations (*b*).

6. *Power of re-entry,* p. 817, f. **1**, *with the varions in the brackets.*

Power to determine lease in the event of fire.

7. IF THE flat, cellar, or other pts of the mansion shl be destroyed or damaged by any means not arising from the act or default of the lessee or any pson being a servant of the lessee or being in the flat or cellar with his express or implied permission so as to render the flat unfit for occupation this psnt lease may be terminated at the option of either the lessor or the lessee (notice of such option to be served on the other of them in writing within three calr months from such destruction or damage) & thrupon this lease & everything hrin contained shl be void as from the date of such destruction or damage witht prejudice to any claim by either party against the other

(*b*) Even in the absence of any express covenant to observe the regulations, a lessor may be restrained at the instance of a lessee from acting in a manner incompatible with provisions in a lease intended for the benefit and convenience of the tenants as a whole: *Hudson* v. *Cripps*, [1896] 1 Ch. 265. In the same way if a scheme is established which is incompatible with any part of the premises being conducted as brothels, the person who conducts them—be he the landlord or the tenant—is bound by the scheme and can be visited with damages or such proper legal consequences as would follow: *Jaeger* v. *Mansions Consolidated, Ltd.*, 87 L. T. 690; and see *Malzy* v. *Eicholz*, [1916] 2 K. B. 308.

in respt of any antecedent breach of covt & the right of the lessor to the rents hby reserved up to such date.

Power to lessee to determine on breach of lessor's covenants.

8. If any covt by the lessor hrinbfe contd shl be broken & if the lessee shl serve notice of such breach on the lessor & such covt shl not be specifically pformed within seven days from the service of such notice, none of the rents hrinbfe reserved shl be payable by the lessee for the period that shl elapse betn the service of such notice & the pformance of such covt &, if such covt shl not be specifically pformed within three calr months from the service of such notice, the lessee shl have the option (on giving notice in writing to the lessor at any time before such covt shl be specifically pformed) of determining the lease & in this case none of the sd rents shl be payable for the period that shl elapse betn the service of the notice complaining of the breach & the time when the lease is determined.

9. *Provision as to notices to lessee or lessor*, p. 828, f. **16**, *substituting* "the flat" *for* "the sd demised premes," *or* "sd premes."

In witness, &c.

The First Schdle above referred to.

1. *To use the flat as a private dwelling-house only*, p. 803, f. **39**.

2. Will not permit (*a*) a pson of unsound mind (whether so found by inquisition or not) or a drunkard or a pson of immoral life to reside in the flat.

3. Will not do any act to the damage or annoyance of the lessor, &c., p. 804, f. **43**, *adding* "or any illegal or immoral act" *after* "neighbourhood."

4. Will not keep any musical instrumt (except one piano having rubber insulators under it or other effective means

(*a*) A covenant in a lease not to "permit" or not to "suffer" an act to be done means "knowingly" permit or suffer: *Toleman* v. *Portbury*, L. R. 5 Q. B. 288, and reasonable steps must be taken by the covenantor to prevent the act: *Berton* v. *Alliance, &c., Ltd.*, [1922] 1 K. B. 743; see also *Atkin* v. *Rose*, [1923] 1 Ch. 522. Mere knowledge by a servant not in charge: *Somerset* v. *Hart*, 12 Q. B. D. 360; *Somerset* v. *Wade*, [1894] 1 Q. B. 574; or by a person over whom the covenantor has no control (such as an under-tenant: *Wilson* v. *Twamley*, [1904] 2 K. B. 99) is not knowledge of the covenantor; but conniving at (*Bosley* v. *Davies*, 1 Q. B. D. 84) or purposely remaining in ignorance of (*Redgate* v. *Haynes*, *ib.* 89) the act being done, is a breach of the covenant.

satisfactory to the lessor to deaden the sound throf) in the flat & will not allow any music or singing to take place in the flat except betn the hours of 8 a.m. & 11 p.m.

5. Will not witht the consent of the lessor (wch may be revoked at any time) keep any live animal in the flat or cellar.

6. Will not keep in the flat or any place in the mansion (except in a pt throf appropriated by the lessor for that ppose) any invalid carre, bath-chair, perambulator, child's mail-cart, or other vehicle.

7. Will not deposit anything or throw any dust or beat any mat, carpet, or cloth on or in or allow children to play in or obstruct the user by the lessor, his tenants, or other psons authorised by him of the entrance hall, passages, staircases, or lifts.

8. Will not remove from the flat any cinders, dust, or rubbish except in a covered pail to be provided by the lessee at his own expse of a design to be approved by the lessor or, if any pson in the flat shl suffer from a notifiable or other infectious disease, without disinfecting the contents of the pail in such mner as the lessor shl from time to time appt.

9. And will not reside or permit any other pson to reside in the flat unless the floors thereof (including the passages) are covered with carpet or felt except while the same shl be removed for cleaning, repairing, or decorating the flat or for some temporary ppose.

10. Will not permit any dancing, fencing, or athletics in the flat.

11. Will not place flower-pots or other things outside the windows of the flat unless the same shl be securely fastened to the satisfon of the lessor.

12. No lift shl be used witht the assistance of a servant provd by the lessor.

13. The passenger lift shl not be used for the convce of luggage or by servants (unless accompanied by a member of the lessee's family) or by tradesmen or messengers.

14. The service lift shl be used only by servants, tradesmen, & messengers, who may take light parcels with them.

15. Will not permit coal or coke to be delivered at the flat or cellar after 11 a.m.

16. Will not permit any coke, coal, furniture & bldg materials to be delivered to the flat orwise than by the luggage lift or back staircase.

17. Will not place any advertisemt or notice of any description on the outside of the walls or door of the flat, but this provon shl not prevent the lessee from having his name witht notice of his profession or business painted outside the entrance door of the flat.

18. *Power for lessor to put up notice for reletting*, p. 797, f. **24**, *substituting* "the flat" *for* "the sd premes."

19. The luggage lift shl only be used for the convce of luggage & coals.

20. No articles weighing in the aggregate more than 5 hundred-weight shl at any one time be conveyed by the luggage lift.

The Second Schdle above referred to.

The servants of the lessor shl—

1. Every morning before 9 o'clock cleanse the entrance hall, passages, staircases & lifts throughout the mansion (except such of the same as shl be within the flats).

2. Remove from the flat not later than 9 a.m. & empty, cleanse & return to the flat before the hour of —— the dust-pails hrinbfe refd to.

3. Remove from the flat & fill with coal or coke from the cellar & return to the flat before 9 a.m. such coal-scuttles as the tenant shl require.

4. Receive and take luggage & take it to & from the entrance of the mansion & the flat & take letters, telegrams, letters & parcels to the flat.

5. Attend to the lighting of the entrance hall, staircases & lifts. Back stair lights to be extinguished at 10 p.m. & front stair lights to be turned low at 11 p.m.

6. Post all letters placed in the letter-box in the hall of the mansion every two hours betn 8 a.m. & 11 p.m.

7. Attend to the lifts betn the hours of 7 a.m. & 8 p.m.

The hall porter shl receive the keys of the outer doors of the flats which shl be deposited with him for safe custody; & shl be on duty betn the hours of 8 a.m. & 11 p.m. & durg the hours of 12 noon to 11 p.m. shl wear a livery.

X.

LEASE *of a* NEWLY ERECTED HOUSE *for* NINETY-NINE YEARS *to a* BUILDER'S NOMINEE (*a*). VARIATIONS *where the* HOUSE *is* UNFINISHED (*b*).

Parties. THIS LEASE, made, &c., BETN A., of, &c. (hrinar called the lessor, wch expression shl include, &c., *see* p. 778), of the first pt, B., of, &c., *builder*, of the second pt, & C., of, &c. (hrinar called the lessee, wch expression shl include, &c.), of the third pt, WITNESSETH that in conson of the expse incurred [& to be incurred] by the sd B. in erectg the messuage hby demised, & of the sum of £—— now pd to the sd B. by the lessee (the receipt, &c.), & of the rents & covts on the pt of the lessee, & condons hrinar reserved & contained, the lessor, by the direction of the sd B., doth hby demise unto the lessee ALL THAT piece of land situate on the south side of a new road or street intended to be called —— Street (*c*), & ALL THAT messuage or dwelling-house & outbldgs erected or now in course of erection on the sd piece of land, & called or intended to be called No. ——, —— Street, *reference to plan*, p. 780, f. **2**, TO HOLD the same UNTO the lessee from the —— day of — [now last past] for the term of nine hundred and ninety-nine yrs, *or less term, reservon of rent of a peppercorn durg first —— yrs & afterwards of* £——, p. 786, f. **4** [*insurce rent*, p. 786, f. **6**] [*if so agrd, improvement & penal rents*, p. 787, f. **7**, p. 787, f. **8**]: AND THE lessee (*d*) hby covts with the lessor in mner followg, that is to say :—

Wit-nesseth.

Demise.

Parcels.

Haben-dum.

Lessee's cove nants.

(*a*) As to building leases under the S. L. Act, 1925, see *post*, p. 875, note. If the property is in a district where registration is compulsory the lessee must apply for registration under the L. R. Act, 1925. The nominee should not be the builder's wife, see *ante*, p. 241.

(*b*) For the variations where the house is situate in a private road or square, and where it may be used as a shop, and where the vendor has other adjoining property, see Precedent VIII.; and for the variations for a lease granted under a power and for several lessors and lessees and other special cases, see "LEASES, MISCELLANEOUS.".

(*c*) In the case of proposed new roads, care should be taken to define what rights of way are intended to be granted. If the premises are described as bounded by an intended new road, a right of way over the road for all its length passes: Norton on Deeds, 240.

(*d*) See *ante*, p. 788, note (*b*).

1. *To pay rent*, p. 788, f. **3**.

2. *To pay rates, taxes, & outgoings affectg premes*, " or any erections thron or additions thereto," p. 789, f. **4**.

[3. *If house, &c., is not complete, to finish it* (*a*), p. 799, f. **30**, *mutatis mutandis*.**]**

4. *To contribute to expense of roads, sewers, &c.*, p. 794, f. **15**.

5. *To paint outside & inside* " the sd premes & all additions thereto," p. 791, f. **8**; p. 791, f. **9**.

6. *To repair*, p. 792, f. **11**.

7. *To deliver up at end of tenancy in good repair*, p. 796, f. **17**.

8. *To permit lessor to enter & view, & repair on notice*, p. 796, f. **19**.

9. *Power to lessor to take inventories of fixtures during last seven yrs*, p. 796, f. **22**.

10. *Not to alter premes*, p. 800, f. **33**.

11. *To use as private house*, p. 803, f. **39**.

12. *Not to carry on offensive trades*, p. 804, f. **41**.

13. *Not to create nuisances*, p. 804, f. **43**.

14. *To insure & rebuild in case of fire*, p. 797, f. **26**.

[15. *To give notice of assignmts of lease*, p. 809, f. **48**.**]**

16. *Not to assign or underlet durg the last 7 yrs without licence*, p. 806, f. **47**, *& note* (*f*).

17. *Not to allow encroachment*, p. 805, f. **46**.

(*a*) As to the necessity, where the lease is granted under a power, that the lessee should covenant to erect or complete the building, see *Hallett* to *Martin*, 24 Ch. D. 624; *Re Chawner's S.E.*, [1892] 2 Ch. 192; *Re Handman & Wilcox*, [1902] 1 Ch. 599. See S. L. Act, 1925, s. 44. Under the S. L. Act, 1925, s. 42 (1), every lease is to be made to take effect in possession not later than 12 months after its date or in reversion after an existing lease having not more than 7 years to run at the date of the new lease, so that it is by no means clear that a tenant for life can agree to give a lease on completion of a building more than 12 months after the date of the agreement. If this were possible, the scheme of the Act in this respect might be frustrated. Hence the tenant for life should agree to give the lease in possession 12 months after date, and a proviso for re-entry should be inserted in case, for instance, the building is not completed within a specified time thereafter. As to what are building or repairing leases, see the cases mentioned above, and *Truscott* v. *Diamond Rock Boring Co.*, 20 Ch. D. 251. As to what are building leases within the S. L. Act, 1925, s. 117 (1) (i), which re-enacts S. L. Act, 1882, s. 2 (10) (iii.), see *Re Daniell's S. E.*, [1894] 3 Ch. 503; see also S. L. Act, 1925, s. 44, *Re Earl of Ellesmere's S. E.*, [1898] W. N. 18. Lease under power.

Power of re-entry, p. 817, f. **1**. AND THE lessor hby (*b*) covts with the lessee, *for quiet enjoymt*, p. 814, f. **10**.

IN WITNESS, &c.

XI.

UNDERLEASE *of a* HOUSE *in* TOWN. VARIATIONS *where* OTHER PROPERTY *is comprised in the* HEAD LEASE, *and where* LICENCE *of the* LANDLORD *is required* (*c*).

Parties. THIS DEED OF LEASE, made, &c., BTN A., of, &c. (hrinar called the lessor, wch expression shl include, &c., *see* p. 778), of the one pt, & B., of, &c. (hrinar called the lessee), of the other pt,

Witnesseth. WITNESSETH that in conson of the rent hrinar reserved & the covts hrinar contained,

Demise. the lessor doth hby demise unto the lessee,

Parcels. ALL THAT messuage or tenemt, &c., wch is held [togr with other ppty] by the lessor under a lease dated, &c.

(*b*) See *ante*, p. 811, note (*b*).

Licence of superior landlord. (*c*) If the licence of the superior landlord is required to the underlease, and he is made a party for the purpose, the head lease should be shortly recited, setting forth the covenant against assignment and under-letting with the addition of the following recital: "AND WHAS the sd X., *superior landlord*, has agrd to concur in these psnts for the ppose of givg his consent to the underlease hby grted in mner hrinar expressed," and the demise will be expressed to be "with the consent (hby testified) of the sd X.," and a proviso should be added, "that the licence hrinbfe given by the sd X. to this psnt demise shl not be deemed to authorise any further assnmt or underlettg." If a separate licence is given, which is much more usual and convenient, it need not be referred to in the underlease.

As to the effect of the disclaimer of the head lease in bankruptcy, see *ante*, p. 834.

Damages for non-repair. In assessing the damages for breach of the covenant to repair contained in an underlease, which from the terms used appears to be an underlease, the liability of the lessor under his covenants in the head lease must be taken into account: *Conquest* v. *Ebbetts*, [1896] A. C. 490; and cf. *Molyneux* v. *Richard*, [1906] 1 Ch. 34; *Clare* v. *Dobson*, [1911] 1 K. B. 35.

Rights of underlessee. The underlessee may deduct from his rent payments made by him under compulsion for rent to a superior landlord, see *Sapsford* v. *Fletcher*, 4 Term. R. 511; or to a mortgagee, see *Underhay* v. *Read*, 20 Q. B. D. 209. As to whether the underlessee is able to sue on covenants by the head lessor, see *ante*, p. 811, note (*b*).

[subjt to the reservons contained in the sd superior lease of the right, &c., *state reservons (if any) in superior lease:* AND EXCEPT & reservg unto the lessor, &c., *additional reservons (if any) to sub-lessor*]. *Habendum*, p. 784, f. **1**; *Reservation of rent*, p. 784, f. **1**: AND THE LESSEE hby covts with the lessor *to pay rent*, p. 788, f. **3**: AND ALSO, &c., *here insert covts similar to those in the head lease, or such of them as are to be performed by the lessee, substitutg throughout the sub-lessor for the ground landlord, & the sub-lessee for the original lessee, except that in the covt to permit lessor to enter & view & to repair on notice, the power to enter & view will be reserved to, and the notice to repair will be given by* "the lessor, or the superior landlord and his assigns, & their respective agents," *add the other covts (if any) to be entered into by the lessee,* [*& a general covt to perform covts in head lease, other than the covt for paymt of rent & any other excepted covts*, p. 889. AND ALSO will allow the lessor to enter on the sd demised premes & to perform thron any of the covts & agrmts on the pt of the sd *origl lessee*, contained in the superior lease of the sd premes, wch may be necessary to prevent a forfeiture of the sd superior lease]: *Proviso for re-entry*, p. 817 (*a*): AND THE lessor hby (*b*) covts with the lessee *for quiet enjoymt*, p. 814: [AND ALSO will durg the sd term pay the rent reserved by the sd lease of the ——day of —— on the first day on wch the same shl be payable: AND WILL observe & pform the covts on the pt of the sd *original lessee*, contained in the superior lease to, *here specify any covts in the head lease wch are to be performed by lessor in respect of the demised premes, & if the head lease comprises other ppty, add,* "AND WILL (*c*) observe & pform all the covts, agrmts, & provons on the pt of the sd *original lessee* contained in the superior lease of the sd premes, so far as the same affect the premes comprised thrin & not hby demised." *Lessee not to allow acquisition of rights of light & air*, p. 805: *Statutory acknowmt & undertakg by A. as to production of superior lease*, p. 518]. IN WITNESS, &c.

Lessee's covenants.

Lessor's covenants.

To pay superior rent.

Perform covenants in head lease.

(*a*) See *Dewar* v. *Goodman*, 1909] A. C. 72.

(*b*) See *ante*, p. 814, note (*a*).

(*c*) In lieu of this covenant the following words may be added at the end of the covenant for quiet enjoyment, "or occasd by any default or neglect by the lessor or any other pson in the pformce or observce of the covts, &c." as in the text.

XII.

UNDERLEASE (*d*) *of Business* OFFICES *to* CO-PARTNERS

Parties

THIS LEASE made, &c., BETN A., of, &c. (hrinar called the lessor, wch expression shl include, &c., *see* p. 778), of the one pt, & B., of, &c., & C., of, &c., some of the members of the firm of Messrs. B. & Co. (*e*) (hrinar called the lessees, wch expression shl include, &c.), of the other pt: WITNESSETH that in conson of the rents & covts by the lessees & condons hrinar reserved & contained the lessor doth demise & lease unto the lessees, ALL THOSE four rooms, offices or apartmts, situate & being on the —— floor at No. —— in —— Street, in the County of ——, & now & for some time past in the tenure or occupon of the lessees, TOGR WITH free ingress, egress, & regress for the lessees, their servants & visitors, to & from the sd demised premes along & through the common staircases & passages of the sd bldg, at all times durg the term hby grted betn the hours of —— in the morng & —— in the night on every day in the yr (Sundays, Good Friday, & Christmas Day, & all other genl holidays & days appted for public thanksgivg or prayer excepted): AND the use, in common with the other psons entitled thereto, of the water-closets, lavatories, & conveniences on the —— floor of the sd premes: TO HOLD the same UNTO the lessees, as joint tenants upon the trusts hrinar declared concerning the same (*f*), from the —— day of —— for the term of —— yrs. *Reservon of rent payable half-yrly*, p. 784: *Trust for sale & powers of dealing with demised premes pending a sale, as in* f. **3**, *post*, p. 1004. AND THE LESSEES hby jointly & severally, covt with the lessor, in mner followg, that is to say:—

Witnesseth.

Demise.

Parcels.

Right of way.

Use of conveniences.

Habendum.

Lessees' covenants.

1. *To pay rent*, p. 788, f. **3**.

2. *To paint, &c., the inside of premes, substitutg in this clause & subsequently, for* " lessee," " lessees," p. 791, f. **9**.

3. *To keep the inside of premes in repair*, p. 792, f. **11**.

4. *To deliver up in good repair at end of tenancy with fixtures*, p. 795, f. **17**.

(*d*) See *ante*, p. 854, note (*e*), and Prec. III., *ante*, p 848.

(*e*) It may be more convenient only to grant the lease to the general partners in case the partnership is limited, see L. P. Act, 1907, ss. 6 and 8; but it should not be granted to more than four such partners: T. Act, 1925, s. 34 (2).

(*f*) For a form of lease to joint tenants beneficially, see *post*.

5. *To permit lessor to enter & view, & to repair on notice,* p. 796, f. **19.**

6. *Not to make any alteration in premes,* p. 800, f. **33.**

7. *To use as offices only,* p. 803, f. **40.**

8. THAT THE lessees will not allow clerks or servants to use water-closets, lavatories, or conveniences appropriated to the use of ppals.

9. *Not to assign or underlet witht licence,* p. 806, f. **47.**

AND THE LESSOR hby covts with the lessees; *To pay rates & taxes,* p. 811, f. **3**; *To keep in repair, &c.,* p. 812; f. **6**; *or* p. 849, f. **3** (iv.); *To insure & re-build in case of fire,* p. 813, f. **7**; *For quiet enjoymt,* p. 814 (*a*). *Proviso for re-entry,* p. 817, f. **1.** Lessor's covenants.

IN WITNESS, &c.

XIII.

AGREEMENT *for a* BUILDING LEASE *where the* TENANT *takes an immediate* EQUITABLE INTEREST, *the existing* BUILDINGS *to be pulled down and others erected* (*b*).

AN AGRMT made, &c., BETN A., of, &c., *lessor* (hrinar called the lessor, wch expression shl include, &c., p. 778), of the one pt, & B., *lessee* (hrinar called the tenant, wch expression shl include, &c.), of the other pt. Parties.

(*a*) See *ante*, p. 814, note (*a*)

(*b*) The following clauses may be substituted for some of those in the text : Variations.

THE LESSOR hby agrees with the tenant to demise to him or his nominees at the times & in mner & subjt as hrinar mentd, ALL THAT piece of ground situate, &c., togr with the sevl houses intended to be erected thron with the appurts throf inclusive [exclusive] of the site of the intended roads, TO HOLD the same UNTO the tenant or his nominees for the term of ninety-nine yrs computed from the —— day of ——, Paying in respt of the sd piece of ground & premes the sevl yrly rents or sums followg (that is to say) :—from the date of this agrmt until the —— day of —— the rent or sum of £——, from the —— day of, &c., the rent or sum of ——, &c. (*increasg yearly till £—— is reached*), such respective rents or sums to be pd by eql qtrly paymts, &c. Agreement to demise. Parcels. Habendum.

THE TENANT shl build, &c., on the sd piece of ground as many Tenant to

Agreement to let.

1. In consn of the rent & agrmts on the pt of the tenant hrinar reserved & contained, the lessor hby agrees to grt to the

build houses.

private dwelling-houses & shops as will produce when leased as hrinbfe provd the sd total aggregate rent of £——.

Lease not to be granted before houses roofed.

The tenant shl not be entitled to require any lease to be grted to him or his nominees until he shl have built & roofed in the house or houses intended to be comprised in such lease, &c. As to roofing, see *Lowther* v. *Heavzr*, 41 Ch. D. 248.

Tenant to have separate leases.

The tenant shl be entitled to a separate lease of any one or more (not exceedg ——) houses hby agrd to be built with the ground & appurts thereto resply belongg at a fair apportioned pt of the sd rents to be approved by the lessor or his surveyor, & to be not more in respt of the house or houses comprised in each lease than one —— pt of the rack-rent value throf when completed, nor less than £—— on any one lease.

See agreement for building a house, *ante*, p. 1, and the forms at pp. 36 *et seq.* The agreement should be registered as a land charge, and if the land is registered the tenant should register notice at the Land Registry: see L. R. Act, 1925, s. 48, and Rule 86.

Power for lessor to take possession of materials.

Immediately on the execution of an agreement in the form given in the text the builder becomes in equity tenant of the land, and consequently a provision authorising the lessor to take possession of the materials brought on the land by the builder on his making default, or a provision that all materials brought on to the land shall belong to the lessor subject to the right of the builder to use them in pursuance of the agreement, renders the builder the reputed owner within the meaning of the Bankruptcy Acts. Where, however, the builder has merely a licence to enter as in the next Precedent, this is not the case; see *ante*, p. 8, note (*a*).

Power to grant building leases under S. L. Acts

A tenant for life or person having the powers of a tenant for life under the S. L. Act, 1925, may under s. 41 grant building leases, including leases of easements, &c., for any term not exceeding nine hundred and ninety-nine years. The general provisions of the Act as to rent (s. 42 (5)), and otherwise, which are stated or referred to *post*, p. 1006, note, apply equally to building leases.

Provisions as to building leases.

By s. 44, every building lease is to be made partly in consideration of the lessee, or some person by whose direction the lease is granted, or some other person, having erected, improved, or repaired, or agreeing to erect, improve, or repair buildings, or having executed, or agreeing to execute, on the land leased, an improvement authorised by the Act (see s. 83 and 3rd Schedule) for or in connection with building purposes. The section extends to the case where the lessee agrees to expend a specified sum on the improvements: *Re Daniell's S.E.*, [1894] 3 Ch. 503. A peppercorn rent or a nominal or other rent, less than the rent ultimately payable, may be made payable for the first five years or any less part of the term.

As to leasing in lots.

It is also provided (sub-s. 3) that where the land is contracted to be leased in lots the entire rent may be apportioned in any manner, save (i.) that the rent reserved by any lease is not to be less than 10s., nor more (ii.) than one-fifth of the full annual value of the land and buildings; and (iii.) the

tenant, or his nominee or nominees (*a*), at the time & in mner & subjt as hrinar mentd, a lease of ALL THAT piece of ground on wch a messuage & bldgs are now erected, situate, &c., & with the admeasuremts & abuttals delineated on the plan, &c., TOGR with the messe & bldgs to be erected thron as hrinar provd, & the appurts throf FOR THE term of —— yrs, to be computed from the —— day of ——, AT THE yrly rent for the first yr of such term of £——, & for every subseqt yr of £——, payable [quarterly] witht deduction (except for landlord's ppty-tax) & to be in other respects accordg to the form of lease contained in the schdle hto (*b*). Parcels. Term. Rent.

2. THE TENANT shl at his own cost with all reasble speed, pull down & remove the messe, bldgs, & erections now standg & being upon the sd piece of ground (*c*), & erect & build thron in Tenant to pull down existing buildings

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total rent reserved on all the leases for the time being granted is not to be less than the total rent, which, in order that the leases may be in conformity with the Act, ought to be reserved in respect of the whole land for the time being leased.

By s. 51, a tenant for life is enabled at any time to grant by writing an option of purchase, to be exercised within ten years, at a price to be fixed at the time of the granting of the option. As to option of purchase.

By s. 46, the Court is empowered where the custom of any district so requires, or there would otherwise be a difficulty, to authorise the tenant for life either generally or in any particular case to make leases or grants for building or mining purposes of the settled land in that district for any longer term or on other conditions than those authorised by the Act (see s. 41), at fee farm or other rents secured by condition of re-entry or otherwise. Having regard, however, to the power to make building leases for 999 years it is unlikely that the Court will be troubled under this section so far as the length of the term is concerned. For forms in settlements extending the statutory power in this respect see Vol. 2, "SETTLEMENTS (REAL)," POWERS ANCILLARY TO THE S. L. ACT POWERS. As to leases or grants for longer terms.

As to the appropriation of land for roads, &c., see S. L. Act, 1925, s. 56.

(*a*) The nominee should not be the tenant's wife, see *ante*, p. 241.

(*b*) A full form of lease should be given in preference to an epitome of the covenants and clauses, as the former is less likely to lead to disputes, and is more protective to the lessor than the latter.

(*c*) As to hoardings, see Public Health, &c., Act, 1890, s. 34; the Advertisements Regulation Act, 1907, ss. 2, 3; and the Public Health, &c., Act, 1907, s. 32; and as to the County of London, see the Metropolitan Paving Act, 1817, s. 75, and the Metropolis Management Act, 1855, ss. 121—123. As to wooden structures generally, see London Building Act, 1894, s. 84, the London Government Act, 1899, Second Sched., Part I., and *Westminster Corpn.* v. *L.C.C.*, [1902] 1 K.B. 326. As to hoardings in the City of London, see the City of London Sewers Act, 1848 (11 & 12 Vict. c. clxiii.), ss. 162—164, and the Act of 1897 (60 & 61 Vict. c. cxxxiii.), by which the Commission of Sewers for the City of London was dissolved, and its powers, &c., transferred to the Common Council. Hoardings.

and erect new ones.

a substantial & workmanlike mner, with the best materials of their several kinds, & in conformity in every respt with plans, elevations, sections, & specifications already approved of & signed by the surveyor for the time being of the lessor, & under the inspection & to the satisfon of such surveyor, one messe of the first-rate class of bldg with all pper & suitable outbldgs, offices, conveniences, & appurts, & shl expend in bldg such messe & premes not less than the sum of £——, the sd messe to be built & covered in on or bfe the —— day of —— & to be completely finished fit for habitation on or bfe the —— day of ——, PROVD that if any delay in completely finishg the sd messe shl arise from fire, tempest, frost, or other inevitable cause or accident, or from any strike or lock-out (*d*) in the bldg trade or any other trade or employmt, such further time shl be allowed for complon as the sd surveyor shl in writg certify to be reasble.

Tenant not to erect buildings not conformable with approved plans and not to alter buildings without consent.

3. THE TENANT shl not at any time durg the term hby agrd to be grted erect or build, or permit to be erected or built, upon any pt of the sd piece of ground hby agrd to be demised any messe, bldg, or erection, not conformable to the plans & elevations previously approved & signed by the sd surveyor, nor make any alteration in the external elevation of the sd messe, bldgs, & erections, witht the previous consent in writing of the lessor.

Old materials to belong to tenant.

4. ALL THE materials of the sd messe, bldgs, & erections wch are to be pulled down & removed as afsd shl become the absolute ppty of the tenant.

Tenant not to create nuisance.

5. THE TENANT shl not durg the progress of the works or afterwards create or allow any unnecessary nuisance upon the sd premes.

Compliance with Building Acts, &c. (*a*).

6. THE TENANT shl at his own expse in the execution of the works afsd comply in all respects with [the Bldg & other Acts affectg the District or County whrin the premes are situate, &] the regulons of the Local Authorities & execute & do all

(*d*) As to strikes and lock-outs, see *ante*, p. 4, note (*b*).

London Building Acts.

(*a*) See the London Building Act, 1894, Parts III., VI., XIII. in particular; the Amendment Act of 1898, s. 3; the Amendment Act of 1905, and the bye-law and standing orders under the Acts, printed in London laws and bye-laws, Tagg and Glenister, pp. 846—852, and in Cohen, London Building Acts, pp. 335 *et seq.*; see also the Housing and Town Planning Act, 1909, ss. 54 *et seq.*

works & things required by any such [Acts or] regulons relative thereto, & pay & indemnify the lessor against all fees, charges, penalties, claims, & expses to be made or incurred thrunder or wch may be payable for obtaing the approval of the Local Authorities to any of the works or matters afsd.

Lessor may enter and view.

7. THE LESSOR or his agent may at all reasble times enter upon the sd premes & view the state & progress of the sd bldgs & works & the materials used & intended for use thrin.

Tenant not to assign.

8. THE TENANT shl not assn, sub-let or pt with the benefit of this agrmt witht the previous consent in writg of the lessor.

To insure (*b*).

9. THE TENANT shl insure the messe hby agrd to be erected or the pt throf wch shl for the time being be erected & keep the same so insured until the sd lease throf shl be grted in an Office to be approved by the lessor in such sum as the sd surveyor shl from time to time certify to be the full value of the same in the joint names of the lessor and the tenant, *continue as in* f. **26**, *at* p. 797, *mutatis mutandis*, *saying*, " accordg to the sd plans, elevations, sections, & specificons."

Power of re-entry.

10. IN CASE the sd messe & premes hby agrd to be erected shl not be erected, covered in, completely finished & made fit for habitation within the respective periods hrinbfe limited for such respective pposes accordg to the stipulons hrinbfe contd [in wch respt time shl be of the essence of this agrmt], or in case of any breach of any of the agrmts or stipulons hrin contained & on the pt of the tenant to be observed or pformed (*c*), [or in case any event shl happen upon wch the lessor wd be entitled to re-enter upon the sd premes if the sd lease had been actually executed by virtue of the proviso for re-entry to be thrin contained,] then & in any such case this agrmt shl, at the option of the lessor, cease & determine, & the lessor may re-enter upon & take posson of the sd piece of ground & premes togr with all bldgs & erections thron (*d*), witht makg to the tenant any compenson or allowance for the same.

Option to lessor to extend

11. IF ANY such default as afsd shl be made in erectg, coverg in, or completg the sd messe & premes within the

(*b*) See another form, *ante*, p. 797.

(*c*) See *Lowther* v. *Heaver*, 41 Ch. D. 248. See also *ante*, pp. 817, 818, note.

(*d*) See *ante*, p. 8, note (*a*); p. 10, note (*a*).

time for completion.

respective periods afsd, the lessor shl be entitled to fix such extended period or periods for the exectg, coverg in, & completg resply of the sd messe & premes as he shl think fit, & in such case this agrmt shl be read & construed as if the period or periods so fixed had been origlly inserted hrin instead of the period or periods hrinbfe fixed in that behalf.

Lease to be executed on completion.

12. THE SD LEASE shl be grted (*e*) & the tenant shl accept the same & execute a counterpt throf when & so soon as the sd messe shl have been completely finished & made fit for habitation, & the other works hrinbfe agrd to be executed by the tenant shl have been executed in accordance with the stipulons hrinbfe contd, & a certfe to that effect, signed by the sd surveyor, shl have been produced to the lessor, such lease & counterpt to be prepared by the solor of the lessor, & the tenant shl not require any abstract or evidence of the title of the lessor (*a*).

Until execution of lease, tenant to pay rent and perform covenants (*b*).

13. UNTIL SUCH lease shl be grted, the tenant shl be deemed to be tenant at will to the lessor at the rent agrd to be reserved thereby & shl (so far as circes shl admit) be liable to such rent & other paymts, covts, restrictions & provons as he wd be subjt to if such lease had been actually grted, & so that the lessor shl have & be entitled to all such remedies by distress, action, & orwise, for recoverg rent in arrear, & for

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(*e*) As to a difficulty where the lessor is tenant for life under the S. L. Acts, see *ante*, p. 87, note (*a*).

(*a*) See *ante*, p. 853, note (*d*).

As to excluding tenancy before lease granted.

(*b*) See another form, *post*, p. 960. If the contract to pay the rent, &c., until the lease is granted were absolute, the intended lessee would be bound by it, although no tenancy were created, and he never took possession : *Marquis of Camden* v. *Batterbury*, 7 C. B. (N. S.) 864 ; *Adams* v. *Hagger*, 4 Q. B. D. 480. It is not unusual in clauses of this kind expressly to negative the creation of a tenancy until the execution of the lease, and to provide that in the meantime a yearly sum equivalent to the rent should be paid and recoverable by distress as if it were rent ; and there can be now no objection to this course, as by the L. P. Act, 1925, s. 189 (1), it is provided that a power of distress given by way of indemnity against a rent payable in respect of land or against the breach of any covenant or condition in relation to land is not a bill of sale within the meaning of the Bills of Sale Acts, 1878 and 1882. It seems better, however, to provide, as above, that in the interim the intended lessee shall be tenant at will at the rent agreed to be reserved, which will carry with it the common law right of distress : *Anderson* v. *M. Rly. Co.*, 3 El. & El. 614 ; and will also enable recourse to be had to the summary remedy for ejecting the tenant provided by the R. S. C., O. III., r. 6, and O. XIV., r. 1, which, if the relation of landlord and tenant were excluded, would not be available.

breach of any of the covts or agrmts afsd on the pt of the tenant, as if the sd lease had been actually grted.

Provision for death of tenant.

[14. If the tenant shl die bfe the sd messe shl have been completely finished & made fit for habitation, & the other works hrinbfe mentd shl have been executed accordg to the stipulons hrinbfe contd, the lessor shl be entitled at his option either to require this agrmt to be pformed by the exs or ads of the tenant, or to determine this agrmt by givg a notice in writg in that behalf to such exs or ads, & if he shl elect to determine the same he shl pay to the exs or ads of the tenant the amt wch shl be certified by the sd surveyor to have been pperly expended by the tenant in or about the bldg of the sd messe & the execution of the other works afsd after deductg the value of the old materials.]

Registered land.

[15. The lessor hby authorises the tenant to register notice of this agrmt under the L. R. Act, 1925.]

Costs.

16. The costs of & incidental to the preparon & execution in duplicate of this agrmt, & of the sd lease & a counterpt throf [& of entry of the notice of this agrmt on the Register] [not exceeding the sum of £——] shl be borne & pd by the tenant.

In witness, &c.

The Schdle above referred to.

Form of Lease.

XIV.

AGREEMENT *for* Building Leases *with* Variations, *and* Option *to* Lessee *to* Purchase *the* Freehold, *the* Lessee *taking an* Immediate Power *of* Entry *only*.

Parties.

AN AGRMT made this —— day of —— Betn A., of, &c. (hrinar called the lessor, wch expression shl, &c., p. 778), of the one pt, & B., of, &c. (hrinar called the tenant, wch expression shl include, &c. (*c*)), of the other pt.

Tenant may enter and build on part of land laid out as a building estate.

1. The lessor hby grts licence to the tenant to enter for the ppose only of bldg as hrin stipulated upon the pieces or plots of ground abuttg on the north on a new road intended to be called —— Road, & containg —— acres, be the same a little more or less, distinguished on the plan hrunto annexed as Lots ——

(*c*) As to the interest of the tenant under an agreement of this kind, see *Quicke* v. *Chapman*, [1903] 1 Ch. 659; *Abbey* v. *Gutteres*, 55 Sol. J. 364.

& —— & formg pt of the —— Este, situate in the Parish of —— in the County ——, as the same is distinguished on the plan hrunto annexed by a pink colour (wch plan is intended only to show the position of the lots & roads & is not intended to be conclusive as to boundaries or dimensions) wch este has been recently laid out for lettg as a bldg este by the lessor subjt to the stipulons contained in the schdle to the model lease annexed to these psnts to the intent that the owner or lessee of any pt of the —— Este might be able to enforce the observce by the owners or lessees of the —— Este of the same stipulons.

Tenant to build not less than — houses.

2. THE TENANT shl erect, cover in, & complete fit for habitation upon the sd pieces of ground in a good & substantial mner, & with the best new materials of every description in accordce with plans, drawgs, elevations, & specificons already, *or*, " to be prepared by & at the expse of the tenant & to be " approved of by the surveyor of the lessor, & to the reasble satisfon, in all respects, of such surveyor for the time being, not less than —— houses with pper & suitable offices & outbldgs, vaults, areas, drains, & fences, on the sites & in the positions marked out & indicated by boundary lines coloured —— on the sd plan, *or*, " to be approved by the sd surveyor."

Materials.

3. ALL MATERIALS wch may from time to time be brought by the tenant on to the premes for use in bldg the houses shl be the absolute ppty of the lessor with liberty for the tenant to employ them in bldg the houses. If & so soon as this agrmt shl have been fully pformed by the tenant, such of the sd materials as shl not have been used for the ppose afsd shl revert to & become the ppty of the tenant.

Houses to be covered in within certain dates.

4. THE SD houses shl be erected & covered in within the times followg, namely [ten] throf bfe the —— day of —— now next, —— more bfe the —— day of ——, & the remaing —— bfe the —— day of ——, & every house shl be completely finished & ready for habitation withn —— calr months after the time appted for coverg in.

Cost of houses(*a*)

5. THE TENANT shl expend in the erection of each house [in a main road] the sum of £—— at least in labour & materials [& of each house in other roads the sum of £—— at least, & questions as to wch are main roads to be settled by the sd surveyor].

(*a*) See S. L. Act, 1925, s. 44 (3), (i.), (ii.), (iii.), and *ante*, p. 875, note.

6. The tenant shl also at his own sole expse bfe the —— day of —— construct & make along the front of the sd piece of ground coloured —— on the sd plan, to the satisfon of the sd surveyor, a pper roadway & pathway of the respective widths of —— feet & —— feet, *or*, " construct & make the roads shown on the sd plan & thron coloured —— with pper sewers thrunder & side junctions where required in accordance with plans & specificons to be approved by the sd surveyor & to his satisfon." Tenant to make a road.

7. The tenant shl repair & maintain, *or*, " pay & contribute a proportionate share of the expse of repairg & maintaing," the sd roads & foot pavemts & main sewers [& lightg & waterg the roads,] until undertaken by the Local Authority, [such proportionate pt to be fixed by the sd surveyor, but not to exceed —— in the pound on the rateable value]. Tenant to pay share of expense of maintaining roads, &c. (*b*).

8. The sd houses shl be private dwelling-houses only except that the tenant shl be at liberty to erect —— shops & no more, & one first-class hotel or tavern. As to class of houses.

9. The tenant shl not, durg the progress of the works or afterwards, [set up any steam engine, or] burn bricks or clay or cement, or create or allow any unnecessary nuisance on the premes, or any pt throf & no excavon shl be made (except for the ppose of digging foundations or makg sewers) & any gravel, chalk, or sand raised or dug up, shl not be disposed of or removed by the tenant, but shl be deposited for the use of the lessor as directed by the sd surveyor. Tenant not to cause a nuisance, &c.

10. *Compliance with Bldg Acts*, p. 878, f. **6**.

11. The tenant shl within one calr month after roofing in each house insure the same with the outbldgs throf against fire in the —— Insce Office, or in some other Office to be approved [appted] by the lessor to the amt of three-fourths of the value throf in the joint names of the lessor & tenant, *or*, " in such names as the lessor shl direct," & shl thrafter keep the same so insured & upon request produce to the lessor or his agent the poly & receipt for the last premium of every such Tenant to insure and expend insurance moneys in rebuilding (*c*).

(*b*) As to works in private streets and roads, see Public Health Act 1875, s. 150; the Amendment Act of 1890, ss. 4, 11, the Private Streets Works Act, 1892, ss. 6, 9, 10, and the Public Health, &c., Act, 1907, Part II.; Public Health Act, 1925, s. 35; *Mayor, &c., of Chester* v. *Briggs*, [1924] 1 K. B. 239.

(*c*) See another form, *ante*, p. 797.

insce, & in case of destruction or damage by fire, shl forthwith lay out the insce moys, & in case of the deficiency throf shl expend any further sums required in rebldg & reinstatg the same accordg to the origl plan & elevon throf previous to such fire.

12. *Tenant not to assn as in last precedent, clause* **8.**

Lessor to grant leases when houses finished.

13. When & as any one or more of the sd houses shl have been built & covered in (*d*) [& the fence walls throf, & the area in front throf, & the gutters, stack pipes, & drains made & completed], *or*, " shl have been completely finished ready for habitation," *or*, " the sum of £—— shl have been expended on any one or more of the sd houses," in accordance with the stipulons hrinbfe contd [& a certfe to that effect, signed by the sd surveyor, shl have been produced to the lessor], the lessor shl, by one or more deed or deeds, grt to the tenant, or his nominee or nominees, a lease or leases of such house or houses with the ground belonging thereto, & the appurts throf, includg half the road or roads adjoing such house or houses, *or*, " but exclusive of the roads," (*a*) For a term of ninety-nine yrs from the —— day of —— At the yrly rent for each house followg (namely), £—— for the yr endg the —— day of ——, £—— for the yr endg, &c., & £—— p.a. for every other yr of the sd term, payable [qtrly] on the —— day of ——, &c., the first paymt to be made on the —— day of ——. And in the meantime, & until the sd respective rents shl commence, the sd respective leases shl be at the yrly rent of a peppercorn, & in case more than one house is comprised in a lease the lease shl be so framed as to make each house liable in respt of its own rents & covts only.

Term.

Reservation of rent (*b*).

Form of leases (*c*).

14. Such lease shl be in the form, & contain the condons & provons set forth in the first schdle hto, with such modificons (if any) as the death of pties & other circes may render necessary.

Tenant

15. The tenant shl whenever required by the lessor accept

(*d*) As to the meaning of "covered in," see *Lowther* v. *Heaver*, 41 Ch. D. 248.

(*a*) See Norton on Deeds, 234.

(*b*) As to the rent to be reserved on building leases granted under the S. L. Act, 1925, see s. 42, sub-s. (1) (ii), and s. 44, sub-ss. (2) and (3); and see *ante*, p. 875, note.

(*c*) See *ante*, p. 877, note (*b*).

& execute a counterpt of the lease or leases hby agrd to be grted upon the terms hrin expressed, & shl not call for the title of the lessor. not to call for lessor's title (*d*).

16. THE SD LEASES & counterpts shl be prepared by the solor of the lessor at the cost of the tenant [such cost not to exceed £—— for each lease & counterpt, exclusive of stamp duty & plans [& the cost of registron] if one house only be included in the lease, & the further sum of £—— for every addonal house so included], *or*, " & all expses attendg the preparon & execution by all pties of this agrmt in duplicate & of the sd sevl leases & counterpts shl be borne by the tenant." Preparation and costs of leases.

17. IF & WHEN leases shl have been grted to the tenant or his nominees of a sufficient number of houses to secure by the ground rents thereby reserved the sd total aggregate rent of £——, the lessor shl (subjt to the provons & stipulons hrin contained) grt one or more lease or leases to the tenant or his nominees of the portions (if any) of the sd land remaing undemised togr with any house or houses erected thron (*e*) at the yrly rent of £1, or in case more than one such lease shl be grted then at the yrly rent of £1 for each such lease, & so that in case more than one house is comprised in any such lease such rent of £1 shl not be apportionable betn such houses: PROVD that all the restrictive & other provons as to bldg & user of the premes & as to the form of lease & orwise wch are hrin contained & wch may be applicable shl apply to the land & houses leased under the psnt clause in the same mner as to the residue of the land & houses comprised in this agrmt. When rent secured by some leases, remainder of premises to be let at nominal rent.

18. UNTIL THE lease of any house shl have been grted the tenant shl, as from the date of this agrmt, & so far as circes shl admit, pay such rent & other moys (wch if in arrear shl be recoverable by the lessor by distress as rent in arrear), & observe & pform such covts & condons as he wd have to pay, observe & pform if such lease had been actually grted. Until leases granted, rent to be paid (*f*).

19. IF THE tenant shl make default in erectg, coverg in, & Power to re-enter on default (*g*).

(*d*) See *ante*, p. 853, note (*d*).

(*e*) If the agreement is entered into under the S. L. Act, 1925, a " residue " lease cannot be granted of land not built upon, nor agreed to be built upon; see *Re Sabin*, [1885] W. N. 197; S. L. Act, 1925, s. 44; Hood & Challis, 7th ed., 235.

(*f*) See *ante*, p. 880, note (*b*).

(*g*) See *ante*, p. 817, note (*d*).

completg any of the sd houses within the respective times, & in mner afsd, or if the tenant or his nominee shl neglect or refuse to accept any of the sd leases, & execute a counterpt throf, or to pay the reasble charges for preparg the same, within one calr month after he shl be requested so to do by or on the pt of the lessor [in any of wch respects time shl be of the essence of this agrmt], *or*, " shl in any respect fail to observe or pform this agrmt," then & in any such case the lessor shl have power to determine the sd licence of, & the right of the tenant to have a lease or leases of, & his equitable right (if any) over such pt of the sd premes whrof a lease or leases shl not have been grted as afsd witht makg to the tenant any compenson or allowce in respt throf, & this agrmt shl thrupon cease as to such pt of the sd premes whrof a lease or leases shl not have been grted, but such power shl be deemed a cumulative remedy, & shl not prejudice any right of action or other remedy of the lessor for the recovery of any rent or moys due to him from the tenant, or in respt of any antecedent breach by the tenant of this agrmt.

Provision for advances by lessor.

20. THE LESSOR shl durg the progress of the sd bldgs & works make advances to the tenant at the times to the extent & bearing intt at the rate specified in the second schdle hto & the tenant shl repay such advances with intt within —— yrs from the date of this agrmt. The advances shl be secd with intt by a first charge on the intt of the tenant under this agrmt effected by the deposit throf & a memo of deposit. At the time when any lease is grted the tenant shl execute & delr to the lessor a legal mtge of the premes comprised thrin for the amt of the moys advanced in respt of the houses or house comprised in such lease with intt at the rate afsd. As soon as any such mtge shl be completed, the premes comprised thrin shl be free & discharged from such pt (if any) of the advances as shl not be thereby secd. Every memo & mtge made psuant to this provon shl be prepared by the lessor's solor at the costs of the tenant & shl contain such provons as such solor shl think fit.

Restrictions (*a*).

[**21.** NOTHING HRIN contained shl impose any restriction on the user of any land not comprised in this agrmt.]

(*a*) This clause must not be inserted if the plot forms part of a building estate.

Recital.

AND WHAS it has been agrd that the tenant shl have the option of pchasing the freehd of the sd pieces of land at any time within —— yrs from the date hrof, at the price & under the condons hrinar mentd, if he, the tenant, shl have duly pformed the agrmts on his pt hrinbfe contd : NOW IT IS HBY FURTHER AGRD,

Agreement.

Power for tenant to purchase the freehold (*b*).

22. IF THE tenant shl within —— yrs from the date of this agrmt give to the lessor —— calr months' notice in writg of his desire to pchase all the pieces of land hrinbfe mentd, or such of them as shl be specified in such notice, & shl up to the date of such notice, & subseqtly to the time of such sale, have duly (*c*) pformed the agrmts on the pt of the tenant hrin contained, the lessor shl sell to the tenant the inheritance in fee simple in posson, free from incumbces [except the restrictive covts hrinar mentd], of the sd pieces of land, or such of them as shl have been specified in such notice, with any bldgs wch may be thron, at the price or sum for the whole of the sd pieces of land of £—— (being twenty-five yrs' pchase of the sd total rent of £—— hrinbfe made

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(*b*) Compare the form *ante*, p. 826, and see the note thereto; and as to leases under the S. L. Act, 1925, under which the option must be exercised within 10 years, see s. 51. The following provision is sometimes inserted instead of that in the text :—

Option to lessor to purchase improved ground-rents.

" In case the tenant shl within —— yrs from the date hrof *or* " at any time durg the sd term " grt or agree to grt any underlease or underleases of any pt or pts of the sd land, & any house or houses erected thron, at an improved ground-rent, the tenant shl forthwith offer to sell every such improved ground-rent to the lessor at a price eql to twenty yrs' pchase of such rent, & on his acceptce of such offer, & on paymt of the sd pchase-moy shl assn the same to him, or as he shl direct: but in case the lessor shl decline to pchase any such improved ground-rent the tenant, in case he shl duly observe & pform this agrmt up to that time, shl be entitled to have a convce of the freehd intt of the lessor in the land comprised in the underlease reservg such improved ground-rent, with any bldgs thron, at the price or sum," &c., *as in the text, & add any of the other clauses in the text wch are appropriate.* The clause conferring the option, whichever form is adopted, must be restricted as to perpetuities, see *ante*, p. 827, note (*b*).

(*c*) As to the significance of this word in connection with the payment of rent, see *Starkey* v. *Barton*, [1909] 1 Ch. 284.

payable), togr with intt at the rate of £—— p.c. p.a. on the sd sum of £—— as from the date of the expiron of such notice & up to the time of complon, & so on in proportion for any portion less than the whole, accordg to the quantity of land pchased, & subjt to the condons hrinar expressed.

Purchase-money for any portion not to be less than £——.

23. THE TENANT may avail himself of the sd option of pchasg as to portions of the sd land, & at different times, but so that on each occasion (except the last, when the pchase-moy shl be the residue of the pchase-moy for the whole) the pchase-moy shl not be less than £——, & on the complon of each separate pchase the rent for the remr of the land shl be reduced by a sum equivalent to £4 p.c. on the pchase-moy pd.

Title to freehold accepted.

24. THE TITLE of the lessor as owner in fee simple free from incumbces of the premes up to the execution of this agrmt shl be considered as accepted, & the lessor shl not be under any obligon to enquire into the title to the leasehd intt hby created or be under any liability by reason of any defect or want of title in the lessee or pson to whom such sale & assurce as afsd is made.

25. *Add any special condons required as in ordinary cases, see* CONTRACTS FOR SALE, pp. 389 *et seq.*

Deeds of conveyance to be executed in duplicate, and to contain restrictive covenants (*a*).

26. THE DEED or deeds of convce shl be executed in duplicate, & shl be in the form set forth in the third schdle hto with such modificons (if any) as the deaths of pties & other circes may render necy & shl contain covts on the pt of the pchaser framed so as to be bindg so far as may be on all psons claimg under him for the protection of the vendor & his adjoing este coloured —— on the sd plan, & also such other provons as may be reasbly required by the lessor for preservg & securg the observce & pformce of such covts as are set out in the sd form.

[**27.** *Arbitron clause*, p. 828, f. **17.**]

IN WITNESS, &c.

[The First Schdle above referred to.

Form of Lease which may be in form of Precedent XV., p. 889.]

[The Second Schdle above referred to *Shewing the amounts and dates of advances.*

(*a*) As to the frame of such covenants, see *ante*, pp. 361 *et seq.*

"WHEN EACH house is covered in, & the brick partition below completed, & the wooden framg for the partitions above fixed, the sash frames built in, the external walls completed, & the chimneys & chimney-pots put on, the sum of £—— per house to be advanced at intt at the rate of £—— p.c. p.a. payable half-yrly."

"WHEN EACH house is finished accordg to this agrmt, & ready for habitation, with all necessary stoves, fixtures, & fittgs, pperly fixed, & the fences completed, & the drains pperly made & connected, the further sum of £—— per house, to be advanced at intt at the like rate payable half-yrly."

"THE TOTAL advances not to exceed at one time £——, exclusive of intt."]

The Third Schdle above referred to.

This will be Precedent LII., p. 624, *mutatis mutandis*.

XV.

BUILDING LEASE *of a* PLOT *on an* ESTATE *laid out for* BUILDING.

PARTIES, as in Prec. VIII., p. 860, *recital as on* p. 624, *mutatis mutandis, saying,* "the lessor to the intent that the owner or lessee for the time being of any pt of the —— Este may be able to enforce in equity the observce by the owners or lessees," &c. (*b*). *Demise as in Prec. VIII.*, of "all that piece of land," p. 625, [togr with the messe & bldgs [now in course of erection] on the sd lot wch is intended to be known as No.—— —— Road] *continue as at* p. 626, *saying,* "covt htofore entered into by a lessee or pchaser of any pt of the —— Este with the lessor, &c." *Reservon of right of drainage*, p. 782, f. **1**: To hold the premes hby demised unto the lessee from the —— day of —— for the term of —— yrs subjt to the burden of any covts already entered into by the lessor with the lessee or pchaser of any pt of the —— Este for the observce of the negative stipulons contained in the schdle hto. *Reservon of rent*, p. 786,

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(*b*) As to endorsing notice on the title deeds of the lessor, see *ante*, p. 274, note (*c*).

forms **3** *or* **4**. And the lessee hby covts with the lessor in mner followg, that is to say :—

1. *To pay rent,* p. 788, f. **3.**

2. *To pay rates, taxes, & outgoings,* p. 789, f. **4.**

Costs. **3.** That the lessee will from time to time during the sd term pay all costs, charges, & expses incurred by the lessor in abatg a nuisance & executing all such works as may be required by a Local Authority to be done on the demised premes.

4. *To execute works,* p. 794, f. **14.**

Lessee to pay share of repairing road. **5.** That the lessee will at all times durg the sd term until the —— Road shl be taken over by the Local Authority contribute a due proportion with the owners or occupiers of the other lots frontg the —— Road, of keeping the same in repair, & of makg up & curbg the same so as to enable the same to be taken over by the Local Authority, such proportion to be ascertained by the surveyor for the time being of the lessor whose decision shl be conclusive on all pties.

[6. *To finish the house,* p. 799, f. **30.]**

7. *Not to make alterations,* p. 800, f. **33.**

8. *To keep in repair,* p. 792, f. **11.**

9. *To paint outside & inside during the last year of the term,* p. 791, ff. **8** *&* **9.**

10. *To deliver up at end of tenancy in good repair,* p. 795, f. **17.**

11. *To permit lessor to enter & view & to repair on notice,* p. 796, f. **19.**

12. *Power to lessor to enter & repair on default of lessee,* p. 796, f. **21.**

13. *Power to lessor to enter & take inventories of fixtures,* p. 796, f. **22,** *with variation in note.*

14. *Power to lessor to enter & repair adjoining premes,* p. 797, f. **23.**

15. *To insure & rebuild in case of fire,* p. 797, f. **26.**

16. *Not to allow easements to be acquired,* p. 804, f. **44.**

17. *Not to allow encroachments,* p. 805, f. **46.**

18. *To give notice of assignment,* p. 809, f. **48.**

Covenant by lessee to observe And the lessee hby covts with the lessor & separately with each pson who is owner or occupier of any pt of the —— Este not hby demised (*a*), that the lessee will at all times durg

(*a*) At law the benefit of the covenants with the lessor runs with the

the term hby grted observe & pform the stipulons specified in the schdle hto so far as they ought to be observed in respt of the piece of land hby demised. stipulations in schedule.

And the lessor hby covts with the lessee in mner followg, that is to say :—

1. *For quiet enjoyment,* p. 814, f. **10.**

2. That the lessor his assns & tenants, owner, owners or occupiers of the lots not hby demised of the —— Este, will at all times durg the sd term observe & pform the stipulons & regulons contained in the schdle hto so far as the same shl relate to land retained by the lessor, or conveyed to a pchaser, or demised to a lessee subjt to this covt. Covenant by lessor to observe stipulations in schedule.

Proviso for re-entry, p. 817, f. **1.** In witness, &c.

The Schdle above referred to.

Stipulations.

1. *Not to erect other bldgs,* p. 800, f. **32**, *saying in this & the followg clauses,* " a lessee or pchaser will, &c."

2. *To obtain lessor's approval before altering premises,* p. 801, f. **34.**

[3. " The lessee or pchaser of lots —— to —— " *will not use premises for* ——, p. 802, f. **38.]**

[4. " The lessee or pchaser of lots —— to —— " *will use as private dwelling-house only,* p. 803, f. **39.]**

5. *Not to carry on offensive trades,* p. 804, f. **41.**

See other stipulons in restrictions as to buildings, maintenance of roads, &c., pp. 361 *et seq.*

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reversion only, but the negative stipulations contained in the schedule enure in equity for the benefit of the owners and occupiers for the time being of the whole building estate: see *ante,* p. 353, note. The benefit of the covenant runs at law with the land of the covenantees, notwithstanding that they are not parties to the deed: *Dyson* v. *Forster,* [1909] A. C. 98. See now L. P. Act, 1925, ss. 56 (1) and 78.

XVI.

AGREEMENT *for* LEASE *of a* PUBLIC HOUSE. A PREMIUM *being paid by the* LESSEE, *and secured by* MORTGAGE (*a*).

Parties. PARTIES, A. of, &c. (hrinar called the lessor), 1; B. of, &c. (hrinar called the lessee), 2.

WHEREBY IT IS AGRD as follows :—

Agreement for lease. **1.** THE LESSOR shl grt & the lessee shl take a lease of ALL THAT public-house or tavern known as —— with the back yard belonging thereto, situate at, &c., togr with the fixtures, fittings, utensils, & things now in or upon the same, from the —— day of ——, FOR THE term of —— yrs, AT THE yrly rent of £—— payable qtrly on the usual qtr days, the first paymt to be made on, &c., AND in conson of the premium of £—— payable by the lessee as hrinar mentd.

Payment of premium. **2.** THE LESSOR hby acknowes the receipt from the lessee by way of deposit of £—— pt of the sd premium, & £—— further pt of the sd premium shl be pd by the lessee to the lessor on the —— day of ——, & £—— the residue throf shl be secd to the lessor by a mtge of the sd lease & the trade & other fixtures & fittings on the demised premes (*b*).

Lease. **3.** THE SD lease & a counterpt throf to be executed by the lessee & the sd mtge shl be prepared by Mr. —— of ——, the solor of the lessor, & shl be in the forms usually adopted by the lessor for such respective instrumts [*or* in the form contained in the Schedle hto], with such variations as the case may require (*c*). The lessee shl pay the costs [not exceedg £—— exclusive of stamp duty] of & incident to this agrmt & the sd lease & counterpt & mtge.

Enquiries as to solvency of lessee. **4.** THE LESSOR shl forthwith make enquiries into the character & solvency of the lessee who hby names Mr. —— of

(*a*) For the stamp duty where a premium is paid on the granting of a lease, see Stamp Act, 1891, Schedule I., Lease or Tack, as amended by the Fin. (1909–10) Act, 1910, s. 75 and the Rev. Act, 1911, s. 15. See *ante*, p. 834

(*b*) See *ante*, p. 792, note (*b*).

(*c*) Covenants personally to reside and conduct the business, and not to assign without licence, were held not to be usual covenants, and the proviso for re-entry was limited to the case of non-payment of rent: *Re Lander & Bagley*, [1892] 3 Ch. 41, and see Foa, 6th ed., 434 *et seq.*

——, & Mr. —— of —— as his references. If the result of such enquiries shl in the opinion of the lessor be unsatisfactory, he shl be at liberty to rescind this agrmt & thrupon shl return to the lessee the sd deposit after deductg £—— for expses.

5. If the lessee shl fail to pform this agrmt he shl forfeit to the lessor the sd deposit, & shl also pay to the lessor the sum of £—— as liquidated damages. Forfeiture on non-performance of agreement.

[**6.** *Statement as to value*, p. 829.]

In witness, &c.

[The Schdle above referred to.]

XVII.

LEASE *of a* Public House *by a firm of* Brewers. *A* Premium *being paid by the* Lessee (*a*).

Parties, A. & B., tradg under the name or firm of, &c. (hrinar called the lessors, which expression, &c., *see* p. 778), 1; C., licensed victualler (hrinar called the lessee, wch expron, &c.), 2: WITNESSETH that in conson, as well of the sum of £—— Now pd by the lessee to the lessors (the receipt whrof is hby acknowed), as also of the rents, covts, & condons, hrinar reserved & contained, the lessors do, & each of them doth, hby demise unto the lessee, All that messe or tavern, with the outbldgs, yard, & appurts thereto belongg, called The ——, situate, &c., Togr with the fixtures & fittgs specified in the

Parties. Witnesseth. Demise. Parcels.

(*a*) As to stamps, see *ante*, p. 895, note (*a*). An underlessee may forfeit the licences or cause the renewal of them to be withheld, and thus injure the value of the property without causing the lessee to commit a breach of covenant: *Bryant* v. *Hancock & Co., Ltd.*, [1899] A. C. 442: *Wilson* v. *Twamley*, [1904] 2 K. B. 99; but see *Berton* v. *Alliance, &c., Co., Ltd.*, [1922] 1 K. B. 742; *Atkin* v. *Rose*, [1923] 1 Ch. 522. This may be obviated by slightly altering the form of the covenants so as to render a permitted underlessee or his assigns liable to perform them. In small matters, it will probably be sufficient to define "the lessee" as including "his permitted undertenants and his and their permitted assigns," but this may possibly lead to doubt as to the construction of some of the covenants. If the scheme of altering the covenants is adopted, it may be better not to define "lessee," and to use the word "lessee" or "lessee and his permitted assigns," or "lessee, his permitted undertenants, and his or their permitted undertenants or assigns," as required in each covenant. In important cases, it will be safer to require a deed to be executed on each assignment or underlease: see *ante*, p. 808, note (*a*). Forfeiture of licences.

schdle hto & togr with the licences now or hrafter to be attached to the premes for keepg the same open as a tavern or public-house; *habendum*, p. 784; *reservation of rent*, p. 784, f. **1**. AND ALSO, *insurance rent, mutatis mutandis*, p. 786, f. **6**. AND ALSO as a further rent the sum of £—— in any & every yr in wch the lessee shl (contrary to his covt hrinar contained) directly or indirectly deal with any pson or psons other than the lessors, or their succors in business [or nominees] for any porter, stout, ale, beer, or other fermented liquors [British & foreign spirituous liquors,

Penal rent for selling liquors not supplied by lessors (*b*).

Tied houses.

(*b*) As to contracts binding the lessee to deal with the lessor, see 5 Dav. Prec., 3rd ed., 135, note; *Luker* v. *Dennis*, 7 Ch. D. 227; *Edwick* v. *Hawkes*, 18 Ch. D. 199; *Clegg* v. *Hands*, 44 Ch. D. 503; *White* v. *Southend Hotel Co.*, [1897] 1 Ch. 767; *John Brothers, &c., Co.* v. *Holmes*, [1900] 1 Ch. 188; *Manchester Brewery Co.* v. *Coombs*, [1901] 2 Ch. 608; *Birmingham Breweries* v. *Jameson*, 67 L. J. Ch. 403; cf. *Tolhurst* v. *Associated, &c., Ltd.*, [1903] A. C. 414; and distinguish *Kemp* v. *Baerselman*, [1906] 2 K. B. 604.

Reduction in respect of duty imposed by the Finance (1909–10) Act, 1910.

A licence holder who is bound to obtain liquors from any particular person is entitled, notwithstanding any agreement to the contrary, to recover as a debt due from or deduct from any sum due to such person so much of any increase of duty payable in respect of his licence occasioned by the Fin. (1909–10) Act, 1910, as may be agreed upon, or, in default of agreement, may be determined by the Commissioners to be proportionate to any increased rent of the licensed premises obtained by such person by reason of such tie: Fin. (1909–10) Act, 1910, s. 46. Unlike s. 2 of the Fin. Act, 1912, which gave similar relief to the lessee of a free house but has since been repealed (see Fin. Act, 1915, s. 18), and all liabilities to make payments under it extinguished (see Fin. Act, 1917, s. 5), s. 46 is not expressed to be confined to leases made before the passing of the Act. It is difficult to see how s. 46 is appropriate to a lease made after the passing of the Act when the increased duty would have been taken into consideration by both parties in fixing the rent; but as there does not appear to be anything in the section which renders invalid a provision in the lease fixing the amount of the increased duty recoverable from the lessor, and thus effectually excluding the jurisdiction of the Commissioners, it may be expedient to insert after the words "except the landlord's ppty tax," on p. 896, "& except the sum of £—— (being the sum hrinar agrd wch the lessee is entitled to recover as a debt due from or deduct from any sum due to the lessors on account of any increase of duty payable in respt of the licence occasioned by the Fin. (1909–10) Act, 1910." If this course is adopted the proviso on p. 896, note (*b*), must be inserted.

Where the brewers are mortgagees in possession, they ought not to let the house as tied; they may be surcharged the extra rent they might have obtained by letting it free: *White* v. *City of London Brewery Co.*, 42 Ch. D. 237. Sometimes a larger rent, including the penal rent, is reserved with a proviso

cordials, & compounds of every description] (all of wch are included in the expression liquors wherever hrinar used)

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for its reduction so long as the lessee performs his covenant to deal exclusively with the lessors, as follows :—

Proviso for reduction of rent if lessee deals with lessor.

" PROVD ALWAYS that if & so long as the lessee shl (psuant to his covt hrinar contained) pchase from & deal with the lessor, &c., for, all the liquors wch shl be consumed, sold, or disposed of in or upon or sent from the sd demised premes the lessor shl be entitled to deduct from each qtrly paymt of the sd rent, the sum of £——."

Sometimes a penal rent is reserved in respect of breaches of covenant generally, see *ante*, p. 787, f. 8

The following is another form of penalty for breach of the above covenant :—

Lessee to pay liquidated damages for selling liquors not supplied by lessors.

" THE LESSEE will pay to the lessors for all malt liquors, &c., pchased from any pson other than the lessors a sum eql to £—— p.c. of the invoice price usually charged by the lessors for goods or articles of a like class & description, accordg to the prices set forth in the schdle hto, & as for liquidated damages, & not as a penalty, wch sum or damages shl be payable by the lessee forthwith on demand in writg of paymt throf being made by the lessors."

As to power of distress for liquors supplied.

The common clause giving the brewer a power of distress for non-payment of the debt for liquors supplied has been determined to be wholly void under the Bills of Sale Acts: *Pulbrook* v. *Ashby*, 56 L. J. Q. B. 376. This power is therefore omitted and a penal rent substituted. Other methods which have been suggested for creating an implied right of distress are (a) to reserve a high nominal rent reducible on payment of the debt for liquors, or (b) to reserve moneys due on the liquor account as additional rent, as below ; but both these must be regarded as experiments, having regard to s. 6 of the Bills of Sale Act, 1878. As to the construction of that section, see *Pulbrook* v. *Ashby*, *sup.*; *Re Willis*, 21 Q. B. D. 384 ; *Re Roundwood Colliery Co.*, [1897] 1 Ch. 373, and L. P. Act, 1925, s. 189 (1); and as to the importance of expressly reserving as rent sums to be paid for liquors supplied, see *Cox* v. *Harper*, [1910] 1 Ch. 480.

Reservation of such moneys by way of rent.

" AND ALSO as a further rent all moys to become due to the lessors from the lessee for any liquor, wch shl be supplied by the lessors to the lessee durg the sd term, such last-mentd rent to become due immedly on such liquor being supplied, & to be taken in or towards satisfon of such moys."

Another expedient is to require a deposit, as in the following clause :—

Provision for deposit by lessee.

" BFE ENTERG into posson of the sd premes the lessee shl deposit with the lessors as secy for the paymt of any moys wch may at any time become owing by the lessee to the lessors

wch shl be sold or disposed of or consumed in or upon the sd demised premes, or shl be brought upon the sd premes to be sold, disposed of, or consumed, or in wch yr the lessee shl sell or dispose of, or permit the sale, disposal, or consumption upon the sd premes of any liquors other than such as shl have been pchased or taken of the lessors, or their succors in business [or nominees], every such last-mentd addonal rent to become payable on the qtrly day for paymt of rent under this demise next ensuing after such dealg, sale, disposal, or consumption as afsd, & to be pd qtrly durg the residue of the then current yr, & all the sd rents to be pd witht any deduction whatever (except the landlord's ppty tax & such sums as the lessee may be authorised to deduct under s. 21 of the Licensing (Consolidation) Act, 1910 (*a*)). And the lessee hby covts with the lessors in mner followg (that is to say):—

1. *To pay rents*, p. 788, f. **3** (*b*).

2. *To pay rates, taxes, & outgoings*, p. 789, f. **4.**

To repay sums paid for insuring.

3. *To repay sums paid by lessor for insuring*, p. 797, f. **25**, *saying*, "the sd messe & outbldgs & the fixtures & fittgs specified in the schdle hto, & all other fixtures & fittgs (including trade fixtures & fittgs) wch may at any time durg

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for rent or for goods supplied, or for damages or orwise howsr, & also as a secy for the due pformce of the lessee's covts in other respects the sum of £——, wch sum shl remain so deposited until the end of the tenancy, but shl not carry intt in favour of the lessee, & the lessors shl be entitled to retain the sd deposit intact until the end of the tenancy, & shl not be bound to apply the same or any pt throf in paymt or discharge of any moys owg from the lessee, but shl be at full liberty to pursue & enforce any other remedies available for the recovery of any such moys."

(*a*) See *L. C. C.* v. *Watney, Combe & Co.*, [1909] 1 K. B. 637; *Wooler* v *North Eastern Breweries, Ltd.*, [1910] 1 K. B. 247; *Lord Llangattock* v. *Watney & Co.*, [1910] A. C. 394; *Knight* v. *City of London Brewery Co.*, [1912] 1 K. B. 10; *Pumford* v. *Butler & Co., Ltd.*, [1914] 2 Ch. 353.

(*b*) Where the deduction for increased duty is agreed (see *ante*, p. 894, note (*b*)) the following proviso may be added: PROVD ALWAYS that the lessee shl be entitled to recover as a debt due from or deduct from any sum due to the lessors the sum of £—— and no more on account of any increase of the duty payable in respt of his licence occasioned by the Fin. (1909–10) Act, 1910.

the sd term be placed or be in or upon the demised premes against loss or damage by fire & for insurg the plate-glass windows & mirrors of & in the sd premes against loss or damage by accident, every such sum to be so repaid on demand immedly after the expenditure throf."

4. *Not to do anything to avoid policy against fire or accident,* p. 799, f. **28**, *mutatis mutandis.*

5. *To paint outside, saying,* "wood & iron work includg all signboards," p. 791, f. **8.**

6. *To repair,* p. 792, f. **11**, *saying,* "fixtures & fittgs specified in the schdle hto, & any other fixtures & fittgs wch may be placed in or upon the sd premes durg the continuce of the sd term includg trade fixtures & fittgs & all sign or other boards & placards relatg to the business of a licensed victualler as carried on by the lessee, or to the business of a brewer as carried on by the lessors." To repair.

7. That the lessee will from time to time & at all times durg the sd term forthwith replace & reinstate any of the sd fixtures & fittgs & sign or other boards & placards wch shl become worn out, broken, damaged, destroyed, or lost, by new articles of the same kind & quality: Provd always that this covt shl not oblige the lessee to replace any plate-glass windows or mirrors wch shl be broken by accident within the meang of any policy of assurance against loss or damage by accident effected by the lessors psuant to their covt in that behalf hrinar contained. To replace fittings, &c.

8. *To deliver up in good repair, saying,* p. 795, f. **17**, "the sd fixtures & fittgs, & all sign & other boards & placards."

9. *To permit lessor to enter & view & to repair on notice,* p. 796, f. **19.**

10. *Power to lessor to repair on default of lessee,* p. 797, f. **21.**

11. *Power to lessor to enter & take inventories of fixtures,* p. 796, f. **22**, *saying,* "fixtures & fittgs, sign & other boards & placards."

12. *Not to make alterations,* p. 800, f. **33.**

13. *Not to assign or under-let,* p. 806, f. **47**, *with the variation in the note*; & will not durg the sd term give any bill of sale or preferential secy on his goods or effects witht the written consent of the lessors. Not to give bill of sale.

To reside (*a*).

14. That the lessee will at all times durg the sd term reside upon the demised premises & psonally carry on the business of a licensed victualler thron so long as the necy licences can be procured.

To obtain licences.

15. That the lessee will apply for & use his best endeavours to obtain the necy licences or renewal of licences for openg & keepg open the sd premes durg the sd tenancy as a tavern & public-house duly licensed for the sale & consumption thrin of ale, beer, wine & spirits by retail, & will pay the excise duties for the sd licences & will not surrender the same licences or any renewed licences or any of them: [*add if so desired,* " & will durg the sd term keep the sd licences & every renewed licence insured against forfeiture or refusal to renew in the name of the lessor for the sum of £—— in some Office to be approved of by him in writg & that any moys reced by the lessor in respt of such policy shl be retained by him for his own use "] (*b*).

16. That the lessee will at his own expse make any structural alterons in the premes, wch may be ordered under section 72 of the Licensing (Consolidation) Act, 1910 (*c*).

17. That the lessee will use his best endeavours to increase & extend the business & custom of the sd house.

To keep house open (*d*).

18. That the lessee will keep the sd premes open for the

(*a*) This covenant is broken by assignment to a company, see *Jenkins* v. *Price*, [1908] 1 Ch. 10. In the absence of a covenant to reside, the lessor is unreasonable in withholding his consent to an assignment of the lease on the ground that the proposed assignee will not reside on the premises: *Mills* v. *Cannon Brewery Co.*, [1920] 2 Ch. 38.

Insurance of licence.

(*b*) The policy granted to the occupier is generally limited to assurance against forfeiture or refusal to renew *owing to acts not under his control* while the words in italics are not inserted in a policy to a person who is not the occupier. It seems better not to insert a covenant to insure the licences, and for the lessor to insure in his own name. A covenant to insure the licence against refusal to renew would presumably bind the lessee to insure against refusal to renew on the ground of redundancy, though the case is otherwise with regard to a covenant to insure against the loss of the licence: see *Wootton* v. *Lichfield Brewery Co.*, [1916] 1 Ch. 44. But the covenant is only an indemnity covenant so that the lessor could only recover the amount of loss (if any) not covered by the statutory compensation: *Ibid*, p. 53.

(*c*) See *post*, p. 904, note (*a*).

(*d*) As to the effect of a covenant to keep the premises open in due and proper course of business as an inn, tavern or licensed victualling house, see *Dartford Brewery Co.* v. *Till*, 95 L. T. 636.

sale of liquors durg the greatest number of days & greatest number of hours that shl be allowed by law.

19. That no gamg, riotg, disorderly or unlawful practices shl take place on the premes & that nothing shl be done, suffered, or omitted on the premes whereby the sd licences or any of them or any renewed licence may be or become liable to be forfeited, or the renewal throf withheld, or whereby the sd trade or business or the goodwill throf may in any way be or be liable to be prejudicially affected, or whereby the laws for the time being in force affectg publicans or licensed victuallers shl be broken either by an act of commission or omission, it being expressly agrd that any conviction of the lessee [or his permitted assign or tenant] (*b*) for any offence against any statutes for the time being in force regulatg the trade of licensed victuallers, or any notice or complaint given or made by any Justice of the Peace or by the Superintendent or actg superintendent for the time being of any police force or the inhabitants of the sd Parish as to the conduct or managemt of the sd house & premes, shl be conclusive evidence of a breach of this psnt covt.

To conduct business properly.

Nor do acts to forfeit licences (*a*).

20. That the premes shl be used durg the sd tenancy as a tavern or licensed victuallg house only, & for no other ppose, so long as the necy licences can be obtained.

Use premises only as public-house.

21. That nothing shl be done or suffered upon the premes wch may be or grow to the damage or annoyce of the lessors [& that no beer, ale, porter, or other malt liquors shl be brewed upon or about the sd premes].

Not cause annoyance.

Not to brew.

22. That the lessee will deal exclusively with the lessors or their succors in business [or nominees] for all liquors wch shl be sold or consumed upon the sd premes or shl be brought thron to be so sold or consumed.

Deal with lessors only (*c*).

(*a*) See form of covenant for payment of sum as liquidated damages on conviction for any offence against the Licensing Act, 39 Sol. J. 485, and as to the construction of this covenant, see *Bryant* v. *Hancock & Co., Ltd.*, [1899] A. C. 442; *Mumford* v. *Walker*, 71 L. J. K. B. 19; *Wilson* v. *Twamley*, [1904] 2 K. B. 99. See also *Radford* v. *Williams*, 110 L. T. 195.

(*b*) The covenant is absolute in form. As to the effect of this, see *Palethorpe* v. *Home Brewery Co., Ltd.*, [1906] 2 K. B. 5.

(*c*) The burden of this covenant runs with the lease: *White* v. *Southend Hotel Co.*, [1897] 1 Ch. 767. See further as to this covenant, *ante*, p. 897, note (*b*).

23. And will not on any pretence whatsr pchase, take in, or receive, or have in his posson, or directly or indirectly sell or dispose of or permit the sale, disposal, or consumption in or upon the sd premes of any liquors other than such as shl have been pchased or taken of the lessors, or their succors in business [or nominees], provd they shl be willing to supply the same to the lessee at the fair market price (*d*), *or* "at the prices charged to their other customers," & the fact of any barrel other than such as are supplied by the lessors being upon the sd demised premes (whether empty or not) shl be conclusive evidence of a breach of this covt.

Lessors to have charge for goods supplied (*e*).

24. And further that the lessors shl be entitled to a charge on the intt of the tenant in the sd demised premes & the tenant's fixtures (if any) now or for the time being thrin (but excludg psonal chattels within the meang of the Bills of Sale Acts, 1878 & 1882) for the amt from time to time owing from the lessee to the lessors for goods supplied.

Permit lessors to enter and view and to examine accounts.

25. And also that the lessee will permit the lessors, or any pson appted by them, at any time to enter & inspect all cellars, vaults, or stores belongg to or in the occupon of the lessee (wheresr situate), & the stock of liquors in the same, & also to inspect & examine the books & accounts of the business carried on by the lessee upon the sd premes.

To pay monthly.

26. And will pay & settle with the lessors or their succors in business for all articles & things supplied by them to the lessee once in every calr month or oftener if required durg the sd term.

On expiration of term to transfer licences (*f*).

27. And also will at the expiron or sooner determinon of the

(*d*) See *ante*, p. 897, note (*b*). These words must be construed with reference to the circumstances which the contracting parties must be taken to have had in view which may show that the price referred to is the price to be paid by the tenant of a tied house as distinguished from the price in the open market: *Charrington & Co., Ltd.* v. *Wooder*, [1914] A. C. 71, and see *Courage & Co.* v. *Carpenter*, [1910] 1 Ch. 262.

(*e*) See *ante*, p. 895, note. As to fixtures, see Bills of Sale Act, 1878, s. 4 (2), and s. 7. This charge, though equitable only, being by deed, will carry with it the remedies conferred by the L. P. Act, 1925, s. 101 : see definition of "mortgage" in s. 205 (xvi). The clause subjects the deed to a mortgage stamp in addition to the lease stamp ; see Stamp Act, 1891, s. 88 (2), as to mortgages for unascertained amounts.

(*f*) A covenant to transfer a licence means that everything shall be done by the lessee to obtain the transfer of the licence but does not import any warranty by the lessee that the licence shall be in existence: *Williamson* v. *Issott*, 25 T. L. R. 514.

sd term deliver up to the lessors, or their nominees or nominee, & do all necy acts for transferrg to them or him the then existg licences (magisterial & excise), on being pd the fair proportion for the unexpired term throf.

28. And that such licences if not so delivered & transferred shl be considered as lost or wilfully withheld by the holder throf so that the magistrates may receive a copy throf under section 43 of the Licensing (Consolidation) Act, 1910.

Make applications for renewal of licences.

29. And will also sign any notices, & make any applicons for the transfer or renewal of the licences wch the lessors may require.

30. And will upon any applicon produce to the Licensing Justices & deposit with their Clerk a plan of the premes, & will at his own expse make within the time fixed by the Licensing Justices such alterations as they shl lawfully direct (*a*).

31. And will at his own expse attend, if required, bfe the Justices in pson, & consent to any such transfer or renewal.

Power for lessors to apply for renewal of licences (*b*).

32. And that it shl be lawful for the lessors or any pson appted by them in that behalf, & they, or he, are, or is hby irrevocably empowered to apply for & sign, give, & do in the name & as the agents or agent of the lessee, all notices & acts necy for obtaing such transfer or renewal as afsd as the case may be, & on the hearg of any such applicon the production of these psnts shl be conclusive evidence against the lessee of his consent to such transfer or renewal being made, & he shl not be at liberty then or thrafter to oppose or question such transfer or grt (*c*).

Division of compensation money.

33. And if at any time hrafter such licence shl not be renewed for any cause other than the misconduct of the lessee

(*a*) See Licensing C. Act, 1910, s. 72. These powers cannot be exercised by the justices on the transfer of a licence: *R.* v. *Merioneth Justices*, 99 L. T. 89. Only structural alterations can be required: *Smith* v. *Portsmouth Justices*, [1906] 2 K. B. 229.

(*b*) The reference as to questions of renewal is to the compensation authority (who are in a county borough, including London, the whole body of borough justices, or in a borough that is not a county borough the quarter sessions for the county, see Licensing C. Act, 1910, s. 2 (3) (*c*)), and not to the licensing justices, except in certain cases: see Licensing C. Act, 1910, s. 18; *Leeds Corpn.* v. *Ryder*, [1907] A. C. 420; *R.* v. *Newington Justices*, [1914] 2 K. B. 710; *Colchester Brewery* v. *Essex Licensing Justices*, [1916] 2 K. B. 126; *The King* v. *Bath Compensation Authority*, [1925] 1 K. B. 685.

(*c*) See *Garrett* v. *Justices of Middlesex*, 12 Q. B. D. 620.

(in wch case no compenson shl be pd to him) & paymt of compenson for non-renewal throf shl be made, then, subjt to the approval (*d*) of the compensation authority, there shl be pd to the lessee a sum not exceedg one-fifteenth pt of the amt of such compenson & the residue throf shl be pd to the lessors.

Power for lessors to alter signs.

34. And also that the lessors may at any time remove any sign or other boards & placards affixed to the sd premes (whether externally or internally) & may at any time affix thereto such sign or other boards & placards with such inscriptions thron as they may think fit, & that the lessee will not remove, efface, alter, or intermeddle with the same, or affix any other sign or other boards or placards to the sd premes.

Proviso for re-entry in case of non-payment of rent, or breach of covt, or bkptcy, &c. (*e*), "or if the licences shl be forfeited or not renewed, or if the lessee shl be convicted of any offence against any of the laws affectg publicans or licensed victuallers," p. 817, f. **1** (*f*).

And the lessors hby covt with the lessee—

Covenants by lessors.

1. *For quiet enjoymt*, p. 814, f. **10**.

To insure.

2. *To insure*, "the sd demised messe & premes includg the fixtures & fittgs specified in the schdle hto, & any other fixtures & fittgs wch may at any time durg the sd term be affixed to the demised premes with the consent of the lessors, includg

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(*d*) See the Licensing C. Act, 1910, s. 20; *Noakes* v. *Noakes & Co., Ltd.*, [1907] 1 Ch. 64; *Dawson* v. *Braines, &c., Ltd.*, [1907] 2 Ch. 359; *Bent's Brewery Co., Ltd.* v. *Dykes*, 100 L. T. 476.

As to power of Court to relieve against forfeiture of lease.

(*e*) The power given to the Court by s. 146 of the L. P. Act, 1925, to relieve against forfeiture of a lease for breach of covenant, &c., extends to a covenant or condition against assignment, &c., where the breach occurs after 1925; but not to a condition for forfeiture on bankruptcy or taking in execution in case of a public house or beer shop: sub-s. 9 (*c*).

(*f*) As to the omission of the power to effect a forcible entry, which is frequently found in such leases, see *ante*, p. 820, note. Having regard to the risk of a renewal of the licences being refused merely because the authorities wish to diminish the number of public houses, it may be proper in the interest of the tenant to insert, "Provd also that if at any time the renewal of the sd licences or any of them shl be refused for any cause other than the act, default, or misconduct of the lessee or of any other pson in occupon of the demised premes, & the lessee shl be desirous," &c., *continue power to lessee to determine lease*, p. 824, f. **9**. In the absence of such a provision the lease continues and the lessee is liable for the rent: *Grimsdick* v. *Sweetman*, [1909] 2 K. B. 740.

trade fixtures & fittgs," *against fire*, " & the plate-glass windows & mirrors against loss or damage by accident or otherwise," p. 813, f. **7**, *mutatis mutandis*.

3. And that the lessors will durg the sd term supply the lessee with such liquors as he may require, but not after the lessee shl have contracted a debt to them for goods supplied to the amt of £—— until such debt shl be fully pd & satisfied. To supply beer.

And it is hby agrd that for the ppose of surrendering the sd licences, the lessor may determine this psnt lease on givg one calr month's previous notice in writg to the lessee or leavg the same on any pt of the demised premes witht compensatg the lessee for his good-will or loss of trade, but pchasg from the lessee such trade fixtures, fittgs & effects as are usually pchased by an in-comg from an out-going tenant of a tavern, & at a price to be determined in case of dispute by a sole arbitror, or in case the parties differ by two arbitrors one to be appted by each party or their umpire & takg back the liquors remaing unsold at the expiron of the notice, & also payg to the lessee a proportionate pt of the costs incurred by the lessee in obtaing the then current licenses havg regard to the period wch they shl have to run, & immedly after the expiron of such notice, *continue as in* f. **11**, p. 825. [*Statement as to value*, p. 829.] In witness, &c.

[*Schdle of Fixtures, &c.*]

XVIII.

DEED *of* Covenant *by the* Sub-Lessee *of a* Public House *with the* Head Lessor, *the* Original Lessee *concurring for the purpose of giving a* New Power *of* Re-entry.

Parties, A., *head lessor* (hrinar called the lessor, wch expression shl, where the context so admits, include the pson or psons for the time being entitled to the rent reserved by a lease dated, &c., to wch this deed is suppl), 1 ; B., *head lessee*, 2 ; C., *underlessee* (hrinar called the underlessee, wch expression, &c.), 3. Whas it has been agrd betn the pties hto that the lessor shd consent to the grt by the sd B. of an underlease to the underlessee for the term of —— yrs from Parties.

the —— day of —— of the premes comprised in the sd lease, & that these psnts shd be executed: NOW THIS DEED WITNESSETH, & it is mutually agrd as follows:—

Witnesseth.

Consent of lessor to underlease.

1. The lessor shl forthwith give his consent in writg to the grt by the sd B. to the underlessee of an underlease of the premes comprised in the sd lease by a deed already prepared & intended to bear even date with these psnts & to be made, &c., & hrinar referred to as the underlease.

Covenant by underlessee to perform covenants in lease.

2. The underlessee hby covts with the lessor that he will observe & pform durg the term to be grted by the underlease the covts by the lessee & condons in the sd lease in the same mner as if the same were hrin repeated with the substitution of the name of the underlessee for the name of the sd B.

3. The underlessee hby covts with the lessor *not to assign or underlet*, p. 806, f. **47**, *with the addition in the note.*

4. Provd always, & it is hby agrd, that if the underlessee shl at any time fail or neglect to pform either of his covts hrinbfo contd, or if the underlessee, &c., *continue as at* p. 819, *saying*, "to hold & enjoy thenceforth as if the sd lease & these psnts had not, &c."

In witness, &c.

XIX.

LEASE, *with the* Concurrence *of several distinct sets of* Mortgagees, *of* Freeholds *used as a* Brewery *and of* Freehold *and* Leasehold Public-Houses. Provisions *for keeping up* Value *of* Brewery Plant(*a*).

Parties.

Parties, A. (hrinar called the lessor, wch expression, &c., *see* p. 1011), 1; *the several sets of mtgees of the second, third, fourth, and fifth parts*; B. & C. (hrinar called the lessees, wch expression, &c.), 6: Whas the lessor is entitled to the freehd ppty described in the first schdle hto for an este in fee simple, & to the leasehd ppty described in the sd first schdle for the respective residues of the sevl terms expirg at the dates thrin mentd, subjt [as regards all the sd premes] to the mtges or charges described in the second schdle hto [some of wch affect the whole & other pts only of the sd

Recitals.

Title of lessor.

(*a*) For other forms of leases by mortgagor and mortgagee, see the next Precedent and *post*, p. 1011.

premes] ; & the sd mtge debts are now resply vested in the sevl psons whose names are written in the second column of the sd second schdle opposite the description of instrumt by wch each such mtge or charge was affected, wch last-mentd psons are the same psons as the pties hto of the first four pts & are hrinar collectively referred to as the mtgees (wch expression shl, where the context so admits, include their respective succors in title) ;

Premises used as brewery and public-houses.

AND WHAS the ppty described in the first pt of the sd first schdle is now used as a brewery, known as the —— Brewery, & is hrinar referred to as the brewery, & the ppty described in the second pt of such first schdle consists of public-houses, pchased or taken on lease by the lessor, & the same are hrinar referred to as the public-houses :

Title of lessor to plant.

AND WHAS the lessor is also entitled to the coppers, boilers, engines, machinery, plant, & effects, now affixed to the soil of the brewery, subjt so far as the same are included thrin to the sd mtges & charges [or some of them] :

Agreement for lease.

AND WHAS the lessor has agrd to grt the lease hby effected to the lessees, & the mtgees have agrd to join in these psnts for the pposes & in mner hrinar appearg :

Witnesseth.

NOW THIS DEED WITNESSETH, &c., *conson*, the lessor with the consent (hereby testified) of the mtgees & by virtue of the Law of Property Act, 1925, & of every or any other power enabling him in this behalf, hby demises unto the lessees,

Demise.

ALL & SINGR the sd freehd & leasehd ppty described in the first schdle hto,

Parcels.

togr with the use of ALL & SINGR the coppers, boilers, engines, machinery, plant, & effects, now fixed to the soil of the brewery,

Habendum as to freeholds, and leaseholds held for more than twenty-one years.

TO HOLD all such pts of the sd premes as are of freehd tenure, & such of the sd coppers, boilers, engines, machinery, plant, & effects, as are affixed thereto, & all such pts of the sd premes as consist of leasehds held for terms of yrs of wch the respective unexpired residues exceed twenty-one yrs,

To lessees for twenty-one years.

UNTO the lessees upon the trusts hrinar declared for the term of twenty-one yrs from the day next bfe the day of the date of these psnts, but subjt as to the sd leasehd premes to the rents & covts affectg the same resply :

Habendum as to leaseholds held for less than twenty-one years.

AND TO HOLD all such pts of the sd premes as consist of leasehds held for terms of yrs of wch the respective unexpired residues do not exceed twenty-one yrs, UNTO the lessees upon the trusts hrinar declared, for the unexpired residues of the sevl terms for wch the same are now resply held, except the last day of each such term, subjt to the

To lessees for residue of terms less the last day.

rents & covts affectg the sd last-mentd leasehd premes : *Reservon of rent generally* (*a*), p. 784, f. **1**. *Trust for sale & powers of dealing with demised premes pending a sale, as in* f. **3**, p. 1004.

Covenants by lessees (*b*).

Covts by lessees, " with the lessor & also separately with the mtgees," *to pay rent,* p. 786, f. **3** ; *to pay rates, taxes, & outgoings,* p. 789, f. **4** ; *to keep in repair,* " the messes, bldgs, & erections hby demised, & any new bldgs & erections wch may be

To keep in repair.

placed on the sd premes durg the continuce of this demise, & also all & singr the coppers, boilers, engines, machinery, plant, & effects now or wch may at any time durg this demise be affixed to the brewery, so that such coppers & other things as last afsd may at all times be eql in value to the sum of £—— at the least," p. 792 : *to deliver up at end of tenancy in good repair,* " unto the pson or psons then entitled to the immediate

Perform covenants in head leases.

reversion of the sd respective demised premes," p. 792 : AND ALSO will from time to time, & at all times durg this demise, pay, observe & pform all & singr the rents & covts on the pt of the sevl lessees, & condons reserved by & contained in the sevl

And indemnify lessor and mortgagees against such covenants.

leases under wch the sd leasehd premes are held ; AND WILL keep the lessor, the mtgees & every of them indemnified against all actions, proceedings, costs, charges, claims, & demands whatsr, by reason or on account of the non-paymt, non-observce, or non-pformce of the same rents, covts & condons, or any of them ; *to permit,* " the lessor, the mtgees, & every of them, *to enter & view the premes, & to repair on notice,* p. 796, f. **19** ; *with power to the lessor or mtgees to repair on default of lessees,* p. 796, f. **21** ; *to insure & rebuild in case of fire,* p. 797, f. **26** ; *not to*

Carry on business.

permit easemts, &c., to be acquired, p. 804, f. **44**. AND ALSO will at all times durg this demise carry on the business of brewers on the brewery : AND FURTHER that the lessees will not at any

Use public-houses for no other purpose.

time use the public-houses hby demised, or any of them, or suffer the same to be used, for any other ppose than as a public-house, witht the consent in writg of the lessor, & also will use their best endeavours in order that the sd public-houses may at all times be kept & conducted in a regular & pper mner in every

Not to forfeit licences.

respt : *to obtain* [*& insure*] *licences,* p. 898 : AND THAT the lessees will not do or omit any act, & will use their best endeavours

(*a*) If the mortgages affect different parts of the property, the property affected by each mortgage should be placed in a separate schedule and a separate rent reserved in respect of the property in each schedule.

(*b*) See another form in the next Precedent.

to prevent any act being done or omitted whereby the licences for the vendg of [wines, spirituous liquors,] ale & beer in the sd public-houses may become forfeited, or the renewal throf refused: AND ALSO will at all times use their best endeavours to cause the business of the sd sevl public-houses to be managed or conducted under the sevl names or signs whereby the same are now resply known: AND WILL, upon the determinon of this demise (if required), use their best endeavours to procure that the sd sevl licences grted durg the then current yr for the vendg of any [wines, spirituous liquors,] ale, or beer in the sd demised public-houses may be assned for the unexpired terms throf to the pson or psons then entitled, &c., *as above*, or as he or they shl direct; *Proviso that the lessees may* from time to time durg the continuce of this demise, for the ppose of improvg the brewery, vary, alter or exchange all or any pt of the coppers, boilers, engines, machinery, plant, & effects, wch now are or may hrafter be affixed to the brewery, provd that every such copper, &c., wch may at any time be varied, &c., as afsd, shl be forthwith replaced or improved, so & in such mner that the coppers, &c., for the time being affixed to the brewery may be kept & maintained in good & efficient condon for the pper workg & carryg on of the brewery business, & eql in value to the sum of £—— at the least. *Powers of re-entry & distress granted to lessor*, pp. 817 *et seq.*: *Covt by lessor for quiet enjoymt*, p. 814. AND IT IS HBY AGRD & declared betn the lessor & lessees that the lessor shl, within two calr months from the determinon of this lease (whether the same shl determine by effluxion of time or orwise) pchase all public-houses of any tenure wch may have been pchased or taken on lease by the lessees at a fair valuon; PROVD THAT nothing hrin contained shl prevent the lessees, at any time prior to the determinon of this lease, from demisg at rack rent any of the sd public-houses, & such pchase as afsd to be made by the lessor shl be subjt to every such lease: PROVD ALSO that nothing hrin contained shl prevent the lessees from sellg any of the sd pchased public-houses at any time bfe this lease shl have determined by re-entry, or bfe the —— day of ——, *i.e.*, *a yr*

Carry on public-houses under present signs.

On determination of term transfer licences (*a*).

Power to lessees to alter plant.

Covenant for quiet enjoyment.

On determination lessor to purchase public-houses bought by lessees.

Power for lessees to demise purchased public-houses.

Power to

(*a*) See *ante*, p. 900, note (*f*).

lessees to sell such houses.

Provision for lessor taking overplant on determination of term.

before the end of term, wchever shl first happen ; *Agrmt betn the lessor & lessees,* that immedly after the determinon of the term hby grted (whether the same shl happen by effluxion of time or orwise) a valuon shl be made of all new bldgs & improvemts to bldgs erected or made by the lessees, & of all coppers, &c., on the brewery, & in case the amt of such valuon shl exceed the sum of £——, then the amt of such excess shl be immedly pd by the lessor to the lessees, but if such amt shl be less than the sum of £——, then the amt of such deficiency shl be immedly pd by the lessees to the pson or psons entitled, &c., *as above.* In witness, &c.

The First Schdle above referred to.

Parcels.

The Second Schdle above referred to.

Mortgages, &c.

XX.

LEASE *of a* Mill *and* Fixed *and* Movable Machinery *with the* Concurrence *of* Mortgagees *of* Part *of the* Property.

Parties.

Parties, A. (hrinar called the lessor, wch expression shl in reference to the premes first & secondly hrinar described include the pson or psons for the time being entitled to receive the rent hby reserved in respect throf where the context so admits), 1 ; B. & C. (hrinar called the mtgees, wch expression shl, where the context so admits, include their succors in title), 2 ; D., E. & F. (hrinar called the lessees, wch expression shl, &c.), 3 ; Whas the lessor being the este owner in respt of the fee simple of the mill, machinery, & effects first & secondly hrinar described, subjt to a mtge throf for a term of —— yrs to the mtgees, & being the owner of the machinery & effects thirdly hrinar described, has agrd to grt a lease throf to the lessees for the term & in mner hrinar mentd, & the mtgees have agrd, at the request of the lessor, to join in mner hrinar appearg in the demise of the sd premes first &

Recital of lessors' title.

secondly hrinar described: NOW THIS DEED WITNESSETH as follows:— Witnesseth.

1. The lessor with the consent (hby testified) of the mtgees, so far as regards the premes first & secondly hrinar described & by virtue of the Law of Property Act, 1925, & of every or any other power enabling him in this behalf hby demises unto the lessees, FIRST: ALL THAT mill called —— Mill, situate, *&c.*, with the warehouse, boiler-house, & engine-house, chimney, & reservoir, belongg or contiguous thereto, in the occupon of ——, *reference to plan:* TOGR WITH the water & other privileges & appurts belongg to the sd premes: Secondly, ALL & SINGR the engine, boiler, shaftg, upright & horizontal main gearg, & other the machinery & effects annexed to the soil & freehd of the sd mill & premes, the parlars whrof are specified in the first schdle hto: And Thirdly, ALL & SINGR the steam or power looms, windg machine, warpg mills, beamg frames, & other the machinery & effects wch are not affixed to the soil & freehd of the sd mill & premes, the parlars whrof are specified in the second schdle hto, *habendum*, to the lessees, upon the trusts hrinar declared from —— for the term of —— yrs determinable nevertheless as hrinar mentd, p. 784; PAYG therefor yrly durg the sd term hby grted, & so in proportion for any less time than a yr, for & in respt of the sd premes first & secondly hrinbfe demised, the rent of £——: AND PAYG for & in respt of the sd premes thirdly hrinbfe demised, the rent of £——, *&c.*, the sd sevl rents of £—— & £——, to be pd, *&c.*, p. 784. Demise. Parcels. Reservation of separate rents of property in and not in mortgage (*a*).

2. *Trust for sale & powers of dealing with* "premes first & secondly hrinbfe demised," *pending a sale as in* f. **3**, *post*, p. 1004.

3. *Covt by lessees*, p. 788, "with the lessor, & also separately with the mtgees." Covenants by lessees.

(i.) *To pay*, "unto the lessor, the sd sevl yrly rents," p. 788, f. **3**.

(ii.) *To pay rates, taxes, & outgoings*, p. 789, f. **4**.

(iii.) *To repair*, "except the roofs, outer walls, & ppal timbers of the demised premes, & save & except in the case of fire,

(*a*) If the plant, &c., be of small value, it may be better to reserve a peppercorn in respect of it, and to throw the whole rent on the land and fixtures.

storm, or tempest affectg the premes first & secondly hrinbfe demised," (*b*) p. 792, f. **11**.

(iv.) *Special covts as to paintg.*

(v.) *To deliver up at end of tenancy in good repair,* "unto the lessor," p. 795, f. **17**.

(vi.) *To permit* "the mtgees as regards the sd premes first & secondly hrinbfe demised, & the lessor as regards all the premes hby demised," *to enter & view & repair on notice,* p. 796, f. **19**.

(vii.) *To permit* "the lessor as regards, &c.," *as above, to repair on default of lessee,* p. 796, f. **21**.

(viii.) *To insure premes thirdly demised,* p. 797, f. **26**.

To keep stock.

(ix.) That the lessees will at all times durg the sd term keep on the sd premes stock of double the value of one yr's rent: AND WILL comply with the requirements by the Factory and Workshop Acts, 1901 to 1911 (*c*), or any statute for the time being re-enactg or amendg the same, imposed upon the owner or owners of the demised premes, & will at all times durg the sd term indemnify & keep indemnified the lessor & the mtgees against any breach or non-observce throf.

Comply with the Factory and Workshop Acts.

Valuation of dilapidations to be made fourteen days before the expiration of the term.

(x.) And that, fourteen days bfe the expiron or other sooner determinon of the term hby grted, a pper estimate or valuon shl be made, as betn the lessor & the lessees, of the sum or sums required to put all the premes hby demised into such good repair, order, & condon as they ought to be left in accordg to the covts hrinbfe contd: AND THAT the lessees will forthwith pay to the lessor the amt of such estimate or valuon wch shl be recoverable as liquidated damages.

To pay sums awarded.

4. *Power to lessees to determine lease at end of first —— yrs on giving six months' notice to lessor as to all the demised premes,* p. 824, f. **9**.

Power of re-entry.

5. *Proviso for re-entry on non-paymt of,* "the sd yrly rents of £—— & £——, or any pt throf resply," *or on breach of covt, or on the bkptcy, &c., &c., of the lessees,* p. 817, f. **1**.

(*b*) Another form is, to repair "all the internal pts of the sd premes except the floors & main & other shaftg, gearg, & fixtures belongg to the lessors, damage by fire excepted."

(*c*) As to the effect of these Acts on the covenant to pay outgoings, see *Horner* v. *Franklin,* [1905] 1 K. B. 479; *Stuckey* v. *Hooke,* [1906] 2 K. B. 20; and *ante,* p. 789, note (*e*).

6. *Covt by lessor with lessees to repair,* "the roofs, outer walls, & ppal timbers of the demised premes," p. 812, f. **4**. *To insure,* "the premes first & secondly hrinbfe demised," p. 813, f. **7**. AND WILL at the end or other sooner determinon of the sd term take & pchase from the lessees all the workg stk upon the sd demised premes at a valuon as workg stk. Covenants by lessor. To purchase working stock at determination of lease.

7. *Power to lessor to pchase machinery,* p. 826, f. **14**.

8. *Proviso for cesser of rent on destruction by fire,* "or tempest," p. 820, f. **5**.

9. *Arbitron,* p. 828, f. **17**.

10. *Covt by lessor for quiet enjoyment.* Covenant for quiet enjoyment.

IN WITNESS, &c.

[*The Schdles.*]

XXI.

LEASE *of* ROOMS *in a* FACTORY (*a*), *with the use of* STEAM POWER.

PARTIES, A. & B. (hrinar called the lessors, wch expression, &c., *see* p. 778, *note*), 1; C. (hrinar called the lessee, wch expression, &c.), 2. WITNESSETH as follows:— Parties. Witnesseth.

1. *Demise by lessors to lessee of* ALL THAT room, being & constitutg the ground floor or lowest storey of & in a mill or bldg, situate, &c.: And also ALL THOSE three rooms constitutg the first, second, & third storeys of & in a bldg, &c.: WITH free liberty for the lessee & his servants & workmen at all reasonable times to use the staircase of the sd mill in common with the lessors & their tenants, servants, & workmen (*b*), *habendum,* p. 784: Parcels.

(*a*) For a laundry, see Factory and Workshop Act, 1907.

(*b*) It is not unusual to demise steam power, but as power cannot strictly be demised, *Bentley* v. *Metcalfe,* [1906] 2 K. B. 548, it is better merely to covenant to supply the power. If desired add here, "AND ALSO steam power for the pper & effectual turng & workg of power looms & other machinery eql to such an amt of horse power, not exceedg in the whole fifteen-horse power, as the lessee may from time to time require: AND ALSO steam sufficient for heatg the sd rooms hby demised [& for the preparon of the yarn previous to its being woven"].

Reservation of rents.

PAYG therefor yrly durg the sd term hby grted, & so in proportion for any period less than a yr, the rents followg (that is to say) the yrly rent of £——, AND ALSO for each qtr of a yr ending on one of the usual qtr days, durg wch the lessee shl at any time use more than twelve-horse power & less than fourteen-horse power, the addonal rent of £—— for each horse-power or fraction of horse-power exceedg twelve-horse power, AND FOR each qtr of a yr ending as afsd, durg wch the lessee shl at any time use fourteen-horse power & upwards, the addonal rent of £——, [& also for each qtr of a yr ending as afsd durg wch the price of coal delivered at —— afsd shl exceed 10*s.* per ton, an addonal rent calculated at the rate of £—— p.c. on the sd fixed rent hby reserved for every complete 1*s.* on the cost per ton of coal in excess of 10*s.* per ton], the sd fixed rent of £—— p.a. to be payable in advance (*a*) by eql qtrly paymts, &c., & the paymt of the addonal rents (if any) accruing in each qtr to be made at the qtr-day endg such qtr, & all such fixed & addonal rents to be pd witht any deduction, except for landlord's ppty tax.

Extra rent according to price of coal (*c*).

Covenants by lessee.

2. *Covenants by lessee*, p. 788, f. **1**.

(i.) *To pay rents*, p. 788, f. **3**.

(ii.) *To keep in repair*, "the internal pts of the sd demised rooms & premes, damage by fire, or tempest alone excepted," p. 792, f. **11**.

(iii.) *To deliver up in repair*, p. 795, f. **17**.

(iv.) *To permit lessors to enter & view premes, & to repair on notice*, p. 796, f. **19**.

(v.) *To permit lessors to repair on default of lessee*, p. 796, f. **21**.

3. *Power of re-entry*, p. 817, f. **1**.

Proviso for cesser of rent on deficiency of steam power (*b*).

4. *Proviso for cesser of rents on destruction by fire*, p. 820, f. **5**: PROVD also that if at any time durg the continuce of the sd term hby grted, steam power shl not be duly supplied to the lessee accordg to the covt in that behalf hrinar contained,

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(*c*) The stamp will probably require adjudication in respect of this extra rent.

(*a*) In leases of this nature the rent is generally made payable in advance.

(*b*) The following is another form :—

Provision for stoppage

"PROVD that the lessors shl not be held liable in damages for or in consequence of any stoppage of the machinery belongg to the lessee occasioned by any defect in or accident to the

owing to the steam-engine or main shaftg requirg repair, then & durg that time a proportionate pt of the addonal rents orwise becomg payable durg the qtr shl be remitted.

5. *Covenants by lessors*, p. 811, f. **1.**

(i.) *To pay rates & taxes*, p. 811, f. **3.**

Covenant by lessors to provide steam power for working looms.

(ii.) And further, that the lessors will at all times (except on Sundays, Christmas Day, Good Friday, Bank Holidays, & any other day wch may be observed as a general holiday) durg the continuance of the sd term from six o'clock in the morning until six o'clock in the evening, or as many hours per day as shl from time to time be allowed by law for workg in factories, but on Saturdays until one o'clock only, [unless prevented by strikes & combinations of workmen, or by a lockout made with the concurrce of the Association of, &c.] at their own expse, provide & maintain steam power not exceedg fifteen-horse power, sufft for the pper & effectual turng & workg such power looms & other machinery as the lessee shl affix or set up in or upon the sd premes hby demised or any pt throf.

Keep main shaft going—revolutions per minute.

[(iii.) And also will at all such times as afsd keep the main shaft in the lower room of the sd mill to —— revolons per minute, the number of such revolons being ascertained in the usual mner by a timepiece to be placed in a conspicuous pt of the premes, & to be proved, fixed, & regulated at the expse of the lessee.]

Provide steam to heat rooms and yarn (*c*).

(iv.) And also will durg the sd term provide steam sufft for heatg the sd rooms hby demised, & for the preparon of the yarn previous to its being woven, & for producg artificial humidity of the atmosphere psuant to the Factory & Workshop Acts, 1901 to 1911 (*d*).

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of machinery.

boilers, steam-engines, main shaftg, or other apparatus belongg to the lessors, nor shl any cessation or diminution in the sd rent be allowed or claimed in consequence of any such defect or accident unless such stoppage shl take place for more than seven days in any one yr, in wch case a deduction shl take place in the sd rent proportionate to the excess of such stoppage over seven days in any one yr, wch deduction shl be taken to be in full satisfon of all claims for damages by the lessee against the lessors in respt of such stoppage."

(*c*) See *ante*, p. 913, note (*b*).

(*d*) See *ante*, p. 912, note (*z*).

Keep gearing in repair.

(v.) And also will durg the sd term keep the main mill gearg in the lower room of the sd mill, & the main upright shaftg in the sd three rooms of the sd bldg, in good & sufft repair & workg order, *& to keep in repair,* " the outside walls, floors, & roofs hby demised & the sd staircase hrinbfe mentd," p. 812, f. **4**, *slightly altered.*

(vi.) *For quiet enjoymt,* p. 814, f. **10.**

6. *Arbitration clause,* p. 828, f. **17.**

In witness, &c.

LEASES (AGRICULTURAL) (*a*).

RESERVATIONS (*b*).

1. EXCEPT & RESERVG unto the lessor all timber (*c*), timber-like trees (including fruit trees but not the fruit thereof), tellers & Reservation of timber, &c.

(*a*) See Foa, 6th ed., 801; Woodfall, 21st ed., 947. As to agricultural holdings, see the Agricultural Holdings Act, 1923, which repealed the Agricultural Holdings Acts of 1908 and 1913, the Agricultural Land (Restriction of Notices to Quit) Act, 1919, so much of Part II. of the Agriculture Act, 1920, as remained unrepealed, and the whole of the Amendment Act of 1921. As to allotments, small holdings and cottage gardens, see the Small Holdings and Allotments Acts, 1908 to 1919, and the Allotments Act, 1922; and as to the meaning of allotment, see *Cooper* v. *Pearse*, [1896] 1 Q. B. 562; Foa, 6th ed., 834 *et seq.*; Woodfall, 21st ed., 939 *et seq.* A small holding is defined in the Small Holdings, &c., Act, 1908, s. 61, as an agricultural holding which exceeds one acre and either does not exceed fifty acres, or, if exceeding fifty acres, is at the date of sale or letting of an annual value for the purposes of income-tax not exceeding £50. County Councils have wide powers of acquiring land on sale or lease for small holdings, and of selling or letting it in parcels to tenants for that purpose, see ss. 7—17; and county councils may delegate their powers to the councils of any borough or urban district in the county, see s. 18. The provisions referring to allotments and the powers of county, borough, urban district and parish councils in relation thereto are contained in ss. 23—33. As to compensation to tenants for disturbance by reason of the tenant quitting the holding in consequence of a notice from the landlord, see the Agricultural Holdings Act, 1923, ss. 12 and 13; as to compensation for disturbance in the case of allotment gardens, see s. 2 of the Allotments Act, 1922, which Act repeals s. 11 of the Agriculture Act, 1920, and in the case of a workman occupying a cottage on the holding, s. 14 of the Agricultural Holdings Act, 1923. The compensation payable is fixed at a year's rent, unless it is proved that the loss and expenses incurred exceed this amount, in which case the sum recoverable is such as represents the whole loss and expenses incurred up to a maximum amount equal to two years' rent, s. 12 (6). It is necessary, however, to prove that some loss has been sustained: *Minister of Agriculture, etc.* v. *Dean*, [1924] 1 K. B. 851. Compensation is not payable in respect of the sale of any goods, fixtures, implements, produce or stock, unless the tenant gives the landlord a reasonable opportunity of making a valuation: s. 12 (7) (*a*); and see *Dale* v. *Hatfield Corporation*, [1922] 2 K. B. 282. Agricultural leases. Small holdings.

(*b*) See also *ante*, pp. 782 *et seq.*

(*c*) For distinction between "timber" and "underwood," see Dart, 7th ed., 145; Stroud, 2nd ed., sub. tit. "timber" and "underwood." Timber.

saplgs likely to become timber [& the bodies of all pollards, & the tops & lops of all such trees as have never been topped or lopped as pollards], now standg or growg, or wch durg the term hby grted may be standg or growg, upon the sd demised premes, or any pt throf [with free liberty of ingress, egress, & regress, way, & passage for the lessor, his agents, servants, & workmen, at all reasble times to view, grub up, fell & cut down, & with horses, cattle, & carts, engines, & orwise, to take & carry away the sd timber & other trees [& pollards], & the tops & lops throf, & for such pposes to make & erect all necy sheds & saw-pits & other conveniences on the sd demised premes, doing no wilful spoil or damage to the corn, grass, hay, or other crops of the lessee, & payg to him a fair compenson for all damage actually done, the amt throf in case of dispute to be settled by arbitron].

The landlord is any person for the time being entitled to receive the rents and profits of land: Agricultural Holdings Act, 1923, s. 57 (1): and see *Bradshaw* v. *Bird*, [1920] 3 K. B. 144; *Dale* v. *Hatfield*, [1922] 2 K. B. 282.

As to restriction on notices to a tenant to quit on sale of the property, see Agricultural Holdings Act, 1925, s. 26 (1); and see *Blay* v. *Dadswell*, [1922] 1 K. B. 632.

As to the position of a tenant holding over, see *Wedd* v. *Porter*, [1916] 2 K. B. 91.

In preparing leases or agreements for yearly tenancies of farms, the following points must be attended to:—*First.* Is the tenant to be bound to practice any special system of cropping the arable land in the last year of the term? See the Agricultural Holdings Act, 1923, s. 30. *Secondly.* Is he to treat the meadow-land in any particular manner? *Thirdly.* If there are underwoods, is he to be restricted as to cutting them: *Phillipps* v. *Smith*, 14 M. & W. 589. *Fourthly.* Whether it is desirable to fix by the lease, or leave to subsequent agreement, as provided by ss. 1 (3), 2, 3, or to determine by arbitration under s. 16 and the second schedule the terms of compensation for improvements. It must be remembered that any contract of this kind, whether under seal or not, inconsistent with the provisions of the Act is avoided under s. 50: *Cathcart* v. *Chalmers*, [1911] A. C. 246; see also *Mears* v. *Callender*, [1901] 2 Ch. 388, a decision partly turning on s. 55 of the repealed Act of 1883, and *post*, p. 933. Also, except in cases of agreements entered into before 1921, an agreement as to substituted compensation for improvements under s. 4 of the Act of 1923 will only apply to market gardens. The practical result seems to be that agreements for substituted compensation will only be embodied in leases in cases in which the execution of drainage works is contemplated by the parties or in the somewhat rare cases in which there is a local custom for compensation for improvements which are not included in the Agricultural Holdings Acts.

As to leases by limited owners, see *ante*, p. 830.

2. EXCEPT & RESERVG unto the lessor all [coal, ironstone, ores, quarries, stone, chalk, flints, brick earth, sand, grave, marl & other] mines & minerals in, under, or upon the sd premes or any pt throf with free liberty of ingress, egress, & regress, way & passage for the lessor, his agents, servants, & workmen to dig, search for, get, dress, make merchantable, & carry away the sd [coal, &c., *as above*, & other] mines & minerals, [& to make & burn bricks & tiles] & for the sevl pposes afsd to sink such pits & shafts, & to make & erect such engines, machinery, bldgs, erections, works, & conveniences, on the sd demised premes as may be requisite or convenient, doing no wilful spoil, &c., *as in last form* [Provd nevs that none of the surface rights in this clause reserved shall be exsble except in & upon the surface of land of wch posson shall have been resumed by the lessor in psuance of the right in that behalf hinar reserved (*e*)]. Reservation of minerals (*d*).

3. EXCEPT & RESERVG to the lessor all timber & other trees, & all mines & minerals, with free access to cut, work, & carry away the same resply. Reservation of timber and minerals.

4. EXCEPT & RESERVG to the lessor, subjt to the provons of the Ground Game Act, 1880, & the Ground Game (Amendment) Act, 1906 (*b*), all game [woodcocks, snipes, quails, Short form. Reservation of sporting (*a*).

(*d*) As to the meaning of "mines" and "minerals," see *Hext* v. *Gill*, L. R. 7 Ch. 699; *Tucker* v. *Linger*, 8 App. Cas. 508; *Bell* v. *Wilson*, L. R. 1 Ch. 303; *Att.-Gen. for Isle of Man* v. *Mylchreest*, 4 App. Cas. 294; *M. Rly. Co.* v. *Haunchwood, &c., Co.*, 20 Ch. D. 552; *Lord Provost of Glasgow* v. *Farie*, 13 App. Cas. 657; *Earl of Jersey* v. *Neath Poor Law Union*, 22 Q. B. D. 555; *M. Rly. Co.* v. *Robinson*, 15 App. Cas. 19; *Johnstone* v. *Crompton*, [1899] 2 Ch. 190; *G. W. Rly. Co.* v. *Blades*, [1901] 2 Ch. 624; *Re Todd, Birleston & Co., & N. E. Rly. Co.*, [1903] 1 K. B. 603; *G. W. Rly. Co.* v. *Carpalla, &c., Co., Ltd.*, [1910] A. C. 83; *Symington* v. *Caledonian Rly. Co.*, [1912] A. C. 87; *Barnard, &c., Gas Co.* v. *Farquharson*, [1912] A. C. 864; *A.G.* v. *Salt Union, Ltd.*, [1917] 2 K. B. 488; Norton on Deeds, 247; and see *ante*, p. 405, note (*b*). Meaning of "mines" and "minerals."

(*e*) See form 2, p. 936, *post*.

(*a*) In the absence of reservation, the game, *Pochin* v. *Smith*, 52 J. P. 4, and the right of fishing, *Jones* v. *Davies*, 86 L. T. 447, belong to the tenant. The landlord is liable for injury to crops from overstocking with game: *Farrer* v. *Nelson*, 15 Q. B. D. 258; *Birkbeck* v. *Paget*, 31 Beav. 403; *Erskine* v. *Adeane*, L. R. 8 Ch. 756; and further by the Agricultural Holdings Act, 1923, s. 11, where the tenant has sustained damage to his crops from game, the right to kill and take which is not vested in him, he has a right to compensation under certain conditions, and by s. 50 any agreement to the contrary will be void.

(*b*) See *Stanton* v. *Brown*, [1900] 1 Q. B. 671; *Anderson* v. *Vicary*, [1900] 2 Q. B. 287.

Full form.

landrails (*c*)], wild fowl, rabbits, & fish, with the exclusive right for him, & all psons authorised by him, at all times, of preservg the same, & of huntg, shootg, fishg, coursg, & sportg, over & on the sd demised premes.

The same. Short form.

5. EXCEPT & RESERVG to the lessor, subjt to the provons of the Ground Game Act, 1880, & the Ground Game (Amendment) Act, 1906, the exclusive right to all game & rabbits, & to preserve the same on the premes, with liberty to shoot, fish, hunt, course, & sport thron.

REDDENDUM (*d*).

Penal rents for meadow land broken up (*e*).

1. AND ALSO PAYG in like mner the further yrly rent of £—— for every acre of meadow-land, & so in proportion for any less quantity than an acre, wch being at the commencement of the tenancy [or at any time afterwards] permanent pasture or

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(*c*) The birds included in the brackets are not game, see Game Act, 1831, s. 3, but are within the Game Licences Act, 1860.

(*d*) See *ante*, p. 784 *et seq.* Under the Agricultural Holdings Act, 1923, in the case of a tenancy of a holding for a term of two years or upwards, the tenancy, unless granted or agreed to be granted before the 1st of January, 1921, does not terminate on the expiration of the term unless one party has given written notice not less than one year or more than two years before the date of expiration of his intention to terminate the tenancy; and if no such notice is given the tenancy continues as a tenancy from year to year on the terms of the original tenancy so far as applicable: see s. 23. In the case of an agricultural lease, therefore, the reservation of rent should be "during the continuance of the tenancy," and if the last payment is to be made in advance, it should be made "in advance one calendar month before the determination of the tenancy in the event of the same being determined by notice or in the event of its being determined by re-entry under the proviso in that behalf hereinafter contained immediately on such determination."

As to right of distress.

(*e*) See also *ante*, p. 821. A power of distress given by way of indemnity against a rent or any part thereof payable in respect of any land, or against the breach of any covenant or condition in relation to land is not, and is not to be deemed ever to have been a bill of sale within the meaning of the Bills of Sale Acts (see L. P. Act, 1925, s. 189 (1)).

As to best rent.

By the Agricultural Holdings Act, 1923, s. 42, where a lease is granted under a power requiring the best rent to be reserved, the increase in the value of the holding arising from improvements made or paid for by the tenant need not be taken into account.

Penal rents.

By s. 29, the landlord is disabled from recovering in respect of holdings to which the Act applies under a penal rent any sum in consequence of breach or non-fulfilment of a covenant or condition in excess of the actual damages, except in case of covenant or condition against breaking up of permanent pasture, grubbing underwoods, felling, cutting, lopping or injuring trees, or regulating the burning of heather.

meadow ground shl be ploughed, broken up, sown, or converted into tillage, witht the consent in writg of the lessor, or his agent, such addonal rent to commence from the happeng of the event on wch the same is to arise, & to be payable on the qtrly days afsd durg the then residue of the tenancy.

2. PROVD ALWAYS that if the tithe rent-charge payable by the landlord in respt of the demised premes in any yr shl be less than £——, *i.e. the maximum*, the tenant may so often as the same shl happen deduct the difference between the amt so payable & the sd sum of £—— from the rent payable on the rent day next after the first day of July in that year. Rent varying with tithe (*f*).

3. AND ALSO PAYG in like mner such further rent as shl be eql to £5 p.c. p.a. upon all moys & expses [over the sum of £——] wch may be laid out or incurred by the lessor at the request of the lessee, in or incidental to the erectg of any new bldg or the re-bldg or adding to existg bldgs on, or in under-draing or orwise improvg the sd demised premes: such last-mentd rent to commence & be payable from the half-yrly day for paymt of rent wch shl happen next after the day on wch any moys or expses shl be so laid out or incurred. Additional rent for improvements by lessor.

4. THE SD RENT [SEVL RENTS] shl be pd clear of all deductions except landlord's ppty tax [& land tax, & except the excess of any scot (*b*) or drainage-rate over ——*s.* per acre in any one yr]. Rents to be paid clear of deductions (*a*).

(*f*) By the Tithe Act, 1891, tithe rent-charge is made payable by the owner, and an agreement by the occupier for its payment (s. 1), or for the repayment to the landlord of payments of it made by him, *Lord Ludlow* v. *Pike*, [1904] 1 K. B. 531; *Tuff* v. *Drapers' Guild*, [1913] 1 K. B. 40, is void; but the Act does not apply (see s. 9) to a rent-charge payable under the Extraordinary Tithe Redemption Act, 1886, nor a rent-charge payable under the Tithe Act, 1860, in respect of tithe on any gated or stinted pasture, nor to a sum or rate for each head of cattle turned on, and subject to common rights or held or enjoyed in common, nor to any payment instead of tithes arising or growing due within the City of London: *Re Salter's Lease*, [1921] 2 Ch. 141. Such charges may therefore still be agreed to be paid by the occupier and deducted from the rent. As to the meaning of "owner" in the Act, see *Peed* v. *King*, 11 T. L. R. 18; *Ecclesiastical Commrs.* v. *Upjohn*, [1913] 1 K. B. 501. There is no personal liability Tithe rent-charge.

(*a*) As to the set-off of compensation due to the tenant for disturbance or any improvement, see Agricultural Holdings Act, 1923, s. 37. Compensation.

(*b*) Some such provision appears proper in cases of fen or marsh lands, where, owing to a breach in the sea walls, or dykes, a large scot may have to be levied.

LESSEE'S COVENANTS (*c*).

To repair and paint.

1. And also will [on being allowed by the lessor rough timber, lime for mortar, bricks, & tiles for that ppose on the sd premes or within —— miles throf (*d*)] at all times, during the continuce of the tenancy keep in good repair & condon the farmhouse & all farm bldgs, cottages, barns, sheds, & other erections, gates, stiles, bridges, culverts, ditches, watercourses, walls, fences & hedges for the time being on the demised premes : And will at least once in every —— yrs durg the continuce of the tenancy, or oftener if necy, paint or tar such pts of the same as have been usually painted or tarred.

Thesame. Another form.

2. And also will at all times durg the continuce of the tenancy keep the bldgs, gates & fences of the sd premes in pper repair [damage by fire & tempest excepted], being allowed half the cost of such repairs, except for thatched bldgs the roof of wch shl be repaired entirely at the expse of the lessee [*or* at the expense of the lessor, the lessee provdg straw & other materials free of charge] : And will at all times durg the continuce of the tenancy paint the internal woodwork of the farmhouse at least once in every ten yrs, & the outside of the farmhouse, & such pts of the bldgs as have usually been painted, once in every five yrs with two good coats of oil-paint, & will tar the other outside woodwork of the farm bldgs once in every ten yrs, being allowed half the cost of such paintg & tarrg, *or* "the lessor supplying paint & tar."

To clean out ditches.

3. And also will throughout the continuce of the tenancy clean out at least once durg every yr in a pper mner, & keep in good order all the ditches, watercourses, sluices, sewers, & drains belongg to the demised premes.

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to pay tithe rent-charge : Tithe Act, 1836, s. 67 ; *Bailey* v. *Badham*, 30 Ch D. 84. Under the Tithe Act, 1925, tithe rentcharge is now stabilized at £105 for every £100 of the commuted figure with an addition in respect of tithe rentcharge attached to a benefice of an annual sum of £4 10s. to form a sinking fund which will extinguish the charge at the end of 85 years.

(*c*) For the commencement of the covenants, and the covenants to pay rent, and rates and taxes, see *ante*, p. 788 ; and as to the arrangement of consecutive covenants, see p. 789, note (*d*). It must be remembered that the provisions of the L. P. Act, 1925, s. 146, as to relief against forfeiture, do not apply to conditions for forfeiture on bankruptcy or taking in execution of the lessee's interest contained in leases of agricultural or pastoral land, see sub-s. (9) (*a*).

(*d*) As to the effect of the words in brackets : see *Westacott* v. *Hahn*, [1918] 1 K. B. 495.

4. And also will, on the lessor supplyg on the sd demised premes, or within —— miles throf, pper pipes, pay for all labour, & other expses, in draing the sd land [being allowed such compenson for the same at the determon of the tenancy as is provd by the scale contained in the schdle hto (*e*), & so that the notice required by section 3 of the Agricultural Holdings Act, 1923, is hby dispensed with (*f*)]. And further that no pipe-drain shl, witht the consent in writg of the lessor, or his agent, be laid at a less depth than —— feet from the surface of the ground, & that every such pipe-drain shl communicate with a ditch. To pay for draining.

5. And also will not witht the consent in writg of the lessor or his agent, materially alter the psnt laying out, arrangemt, or condon of the sd demised premes. Not to alter condition of premises.

6. And also will at all times durg the continuce of the tenancy reside at the farmhouse on the demised premes unless authorised in writg by the lessor or his agent not to do so. To reside.

7. And will in all respects cultivate & manage the farm & lands hby demised & every pt throf in a good, pper, & husbandlike mner, accordg to the best rules of husbandry practised in the neighbourhood, and so as not to injure or deteriorate the holding (*h*). To cultivate according to custom (*g*)

8. And will not after notice to quit has been given or reced grow any crops of the same kind in immediate succession. And Provision as

(*e*) If the general provision as to compensation, *post*, p. 1016, is adopted say, "such compenson for the same as is hby & by statute provd." See Agricultural Holdings Act, 1923, ss. 3, 50; and as to set-off by the landlord, see ss. 1, 16—19; see also note, *post*, p. 933.

(*f*) As to service of this notice, see s. 53 of the Act.

(*g*) The following clauses as to the mode of cultivation are for the most part common; but the exact provisions must depend on the local custom, or on the circumstances of each case.

In the absence of express agreement an obligation on the part of the tenant to cultivate in a husbandlike manner is implied by law, and the measure of damages for the breach of such implied obligation is the injury to the reversion: *Williams* v. *Lewis*, [1915] 3 K. B. 493; *Wedd* v. *Porter*, [1916] 2 K. B. 91.

(*h*) As to the conversion of arable or pasture lands into market gardens, and erecting glass houses, if profitable, and usual in the neighbourhood, not being a breach of this covenant, and as to "ameliorating waste" generally, see *Meux* v. *Cobley*, [1892] 2 Ch. 253. A provision against injuring or deteriorating the holding should always be inserted unless express covenants as to the course of cultivation are entered into which, if broken to the injury or deterioration of the holding, will enable the landlord to proceed under the Agricultural Holdings Act, 1923, s. 30 (2).

to cropping and disposal of produce (*a*)

WILL not durg such period afsd, take a second white straw crop off the land wch has borne such a crop in the precedg yr witht the consent in writg of the landlord or his agent: AND WILL durg such period [or in case such period being less than a yr, shd include the time when fallow crops are usually sown] sow not less than one-sixth pt of the arable land with a proportion of clover & grass seeds along with the first crop after summer fallow turnips or other fallow crops.

Provisions as to last year.

9. AND ALSO will, after notice to quit has been given or receed, cultivate & manage the lands hby demised & every pt throf durg the term hby grted [*or* the tenancy hby created] in like mner as if the followg rotation of crops had been followed during the sd term *or* "tenancy" (that is to say), &c.

Notices of provisions protecting the holding under s. 30 of the Agricultural Holdings Act, 1923.

10. WITHT prejudice to the general power hrinar reserved to the landlord or his agents to enter & view the demised premes will at all times allow the landlord or his agent to enter thron & inspect, measure, & estimate the amt of any such injury or deterioration as is mentd in section 30 of the Agricultural Holdings Act, 1923, & also will forthwith (after makg such provon as is mentd in the sd section) give notice in writg throf to the landlord or his agents, & will permit the landlord or his agents to enter upon the demised premes, to inspect, measure, & estimate the value of such provon, & if such provon shl

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Contracts for cropping or disposal of crops.

(*a*) The Agricultural Holdings Act, 1923, s. 30, provides that notwithstanding any custom of the country or the contract for tenancy respecting the cropping of arable lands or the disposal of crops, the tenant may (with exceptions to be noted) practice any system of cropping arable land and dispose of the produce. He has, however, if he exercises his rights under the section, to make provision to prevent the holding from deterioration, which provision, in the case of disposal of the produce, consists in the return to the holding of the full equivalent manurial value to the holding of all crops sold off or removed from the holding in contravention of the custom, contract, or agreement.

This provision does not apply in the case of a tenancy from year to year as respects the year before the tenant quits his holding, or any period after he has given or received notice to quit which results in his leaving the holding, or in any other case as respects the year before the expiration of the contract of tenancy; see the Agricultural Holdings Act, 1923, s. 30 (1). This enactment renders it unnecessary to insert the provisions which were formerly inserted in leases or tenancy agreements as to the cultivation of the land during the term, except during the last year, if a general covenant against injury or deterioration of the holding is entered into. See *ante*, p. 921, note (*h*). Provisions prohibiting the sale of crops may, however, still be useful having regard to the proviso in s. 30 (1) of the Act: and see *Meggeson* v. *Groves*, [1917] 1 Ch. 158.

consist wholly or partially of such return of manurial value as is mentd in the sd section, will state in such notice the nature, value & amt of the things or materials so returned, & will allow the landlord or his agent to take samples of such things & materials for the ppose of analysis, & will produce all invoices & receipts for the pchase-moy throf to him or his agent.

Not to cultivate specified crops.

11. And also will not grow hemp, flax, teazles, or woad, or any other unusual or exhaustg crops on the demised premes witht the previous consent in writg of the landlord or his agent, nor witht such consent leave for seed on the demised premes any turnips, cole, rape, mangold, mustard, or rye grass, or any plants of a like nature, except so much throf as may be necy for seedg the demised premes.

For cultivation of pasture meadows (*b*).

12. And also will not break up, pare or burn any permanent pasture, under a penalty of £100 per acre for every acre broken up, pared or burnt, contrary to this provon, & so in proportion for a less quantity, & will keep the same free from thistles, nettles, & rushes, & ant & mole-hills, & will not mow or cut for hay any [more than —— acres in any one yr, nor the same piece oftener than once in three yrs] of the permanent pasture.

To consume hay, &c., on the premises (*c*).

13. And also will consume thron all the hay, straw, fodder, haulm, clover, artificial grass, turnips, mangolds, & other root crops on the premes, or leave the same at feedg price for the incomg tenant, & will in every yr carry out & spread at pper times, & in a husband-like mner, on the demised premes all dung & muck produced by the consumption of the same.

To consume hay (*d*).

14. And also will consume on the farm all hay made

(*b*) Such a rent can be recovered in full in the case of permanent pasture being broken up; see Agricultural Holdings Act, 1923, s. 29, *secus* as to mowing. Freedom of cropping does not extend to land in grass, see s. 30 (4), and a penal rent may be secured under s. 29. A covenant of this nature relates solely to those portions of the farm which are meadow land or laid down permanently to grass at the date when the covenant is entered into: *Rush* v. *Lucas*, [1910] 1 Ch. 437; but see *Clarke-Jervoise* v. *Scutt*, [1920] 1 Ch. 382, where the covenant was not to plough or break up "any grass land."

(*c*) The trustee in bankruptcy of the lessee is bound by this covenant: *Lybbe* v. *Hart*, 29 Ch. D. 8; *Schofield* v. *Hincks*, 58 L. J. Q. B. 147, which runs with the reversion: see *Chapman* v. *Smith*, [1907] 2 Ch. 97.

(*d*) It is conceived that any covenant contravening the provisions of s. 30 of the Act of 1923 would only be void for the excess: cf. s. 50.

A covenant in these terms prevents a tenant during the last year of his

thron, unless the landlord or his agent gives his written consent to the contrary.

Not to carry off hay, &c., without bringing manure on (*b*).

15. And also will not carry off from the farm any of the hay, straw, haulm, clover, artificial grass or roots, [other than potatoes] witht bringing on to the farm immedly [previously (*a*)] in exchange four cubic yds of good dung for every load of hay, straw, haulm, clover, or artificial grass so carried off, & fifteen cubic yds of good dung for every acre of roots carried off, or an equivalent in other manures, for such quantities resply, such manure & dung, togr with manure made on the farm to be spread in a husband-like mner on the land in every yr, or in the last yr of the tenancy, left made up in pper heaps, the tenant being pd for his labour on the same accordg to the custom of the country.

To consume hay, &c.

16. And also will cause all hay, straw, roots, [other than potatoes] cabbages, & other food for cattle grown upon the sd farm to be consumed thron, & will if the same or any pt throf shl be sold expend one-half of the proceeds of such sale within six months after the sale in the pchase of manure approved by the landlord or his agent, to be applied either to green crops, or to the pasture land, the other half in oil-cake or linseed to be given to cattle or sheep. And will give notice to the landlord or his agent previous to any such sale of hay, &c., *as above*, & shl produce to the landlord or his agent vouchers for the manure or oil-cake bought instead throf, & if any hay, &c., *as above*, be destroyed or damaged by fire will expend the value throf in the pchase of other hay, &c., *as above*, or in manures & oil-cake in the same mner as if such hay, &c., *as above*, had been sold.

To keep up a flock of mountain sheep.

17. And also will at all times keep up a flock of at least —— mountain sheep & lambs, bred & grazed on the demised

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tenancy from selling any hay off the farm without consent, whether such hay was grown in the last year or a previous year: *Meggeson* v. *Groves*, [1917] 1 Ch. 158.

(*a*) See *Warwick* v. *Williams*, 38 Sol. J. 742.

(*b*) See Agricultural Holdings Act, 1923, s. 1 (2); *Re Hull & Lady Meux*, [1905] 1 K. B. 588. After notice to quit has been given or received the tenant may not sell or remove any manure or compost, or any hay, straw, or roots grown in the last year of the tenancy without giving the landlord or incoming tenant an opportunity to purchase the same at their fair market value or at such value as is provided by the contract of tenancy: Agricultural Holdings Act, 1923, s. 31.

premes, & will at the end of the tenancy transfer the same to the lessor or the incomg tenant at a valuon.

18. And also will preserve and prune in due course all fruit-trees in the orchards or elsewhere on the sd demised premes, & will plant such good & healthy young fruit-trees as may be required to supply the place of those wch may die or go to decay, or become unproductive, so as to keep the sd orchards well & sufftly stocked with fruit-trees. To replace fruit-trees (*c*).

19. And also will not cut coppice or underwood (except at the usual season accordg to the custom of the country) & will not cut out any coppice or underwood of less than —— yrs growth & will give ten days' notice in writg to the lessor or his agent, of the intention to cut the same, so as to enable him to mark any tellers. Not to cut underwood except at usual intervals.

20. And also will preserve all trees, tellers, pollards, & saplings for the time being standg or growg on the demised premes from bite of cattle or other injury, & will not cut down, fell or destroy, or top, lop, or prune, or injure by attaching thto any fencg, wire, staples, or nails, or in any other mner any such trees, tellers, pollards, & saplings [under the penalty of £—— for every such tree, teller, pollard, or sapling, to be pd in addon to the actual amt of damage done as afsd, & to be recoverable immedly (*d*)]. To preserve trees, &c.

21. And also will from time to time durg the continuce of the tenancy plash or cut & lay the hedges regularly & in pper season, & stub all borders of hedges, & will, when & so often as he shl new make or cut any of the hedges or fences on the sd demised premes at his own expse, dig & make good ditches on the side of such hedges or fences in the usual mner, & also will at the like expse make & maintain good & sufft wire (*e*), *or*, "rly," *or*, "temporary" fences for preservg any such new made hedges & fences, & the young springs throf from any hurt or damage by cattle or orwise], [& will not cut any hedges (*f*), To preserve hedges and plantations.

(*c*) In the case of a holding to be let as a market garden (where the agreement is made on or after January 1st, 1896), the planting of fruit trees is an improvement not requiring the consent of or notice to the landlord, see the Act of 1923, s. 48, and the third schedule. See *Re Masters and Daveen*, [1923] 2 K. B. 729.

(*d*) See Agricultural Holdings Act, 1923, s. 29; *ante*, p. 918, note (*e*).

(*e*) In a hunting country omit "wire."

(*f*) Omit the word "hedges," except in cases where the hedges may contain underwood.

plantations, or pollards till they are of the age of —— yrs (except such hedges & pollards as shl be clipped yrly) & also will at all times give ten days' notice in writg to the lessor or his agent, of the intention to cut any hedges, fences, or plantations, so as to enable him to mark such tellers as he may think fit to be left growg for timber].

The same Another form.

22. And also will at all times durg the continuce of the tenancy keep all the hedges & fences in good condon, & will yrly at the pper season clip such of the hedges as have been usually clipped.

To preserve minerals, and not to commit waste (*a*).

23. And also will not raise or remove, or suffer to be raised or removed, any stone, clay, brick earth, gravel, sand, or minerals from the demised premes (except materials for makg or repairg new or existg roads on the sd premes) & will not commit wilful or voluntary waste, spoil, or destruction, in or upon the sd premes, or any pt throf, but will use & manage the same in a good & husband-like mner.

To preserve boundaries and prevent new roads or encroachments.

24. And also will preserve all bounds, hedges, & fences, & will not suffer any new roads or footpaths to be made, & will prevent the enclosure of or encroachmt upon any waste lands on the boundaries or frontage of the sd demised premes.

To keep a field book.

25. And also will keep a field book, showg how every field or parcel of the demised premes has been cropped & cultivated in every yr of the tenancy, & permit the lessor or his agent, from time to time to inspect the sd book, & to take copies throf or extracts therefrom.

To allow lessor to inspect, and to repair on notice (*b*).

26. And also will permit the lessor or his agent, at all seasonable times, to enter into & upon the sd demised premes, & to examine the state of repair & cultivon & condon throf, [& to take any map or plan of the sd premes], & if the farm-house, farm bldgs, gates, &c., *followg the words in the covt to repair*, on the sd premes or any pt throf, shl be found defective or out of repair, [or if the sd land or any pt throf shl not be found in a good & pper state of cultivon & condon], & notice in writg of any such defects or matters shl be given to the lessee, or left on the demised premes, the lessee will [if & so far as

(*a*) As to waste and "ameliorating waste," see Vol. 2, "Settlements (Real)," Beneficial Provisions. As to recovery of compensation or other sums due by landlord or tenant, see Agricultural Holdings Act, 1923, ss. 5, 16—19.

(*b*) See Agricultural Holdings Act, 1923, s. 28.

the case will admit] make good the same in a pper mner within the space of three calr months next after every such notice shl have been so given or left as afsd, to the satisfon of the lessor or his agent.

27. And also will not, witht the consent in writg of the lessor, or his agent, use upon the demised premes any gun, weapon, net, or other instrumt for the destruction of game [woodcocks, snipes, quails, landrails] (*d*) wildfowl, rabbits, or fish (except as permitted by the Ground Game Act, 1880, & the Ground Game (Amendment) Act, 1906), but will protect & preserve the same, & the nests & eggs of all such birds as afsd, & at the request of the lessor, or his agent, will give notice to any pson to be named by him not to come upon [& will warn off all psons trespassg upon] the demised premes for the ppose of killg, takg, searchg for, or followg the same, & will also allow his name to be used in any information, action, or prosecution for such trespass, on being saved harmless against all costs & damages by reason throf. To protect game (*c*).

28. And also will use his best endeavours to assist in the preservon of the feathered game by protectg the nests, & by preventg disturbance of the birds by dogs durg the nestg season. The same. Another form.

29. And also will not witht the consent in writg of the lessor, or his agent, assn, underlet, or pt with the posson of, the demised premes, or any pt throf (*e*). Not to assign or underlet.

30. And shl previously to the —— day of —— in every yr of the tenancy deliver to the lessor, or his agent, a correct statemt in writg of any improvemt within part 3, of the first schdle to the Agricultural Holdings Act, 1923, wch shl have To furnish particulars of improvements (*f*).

(*c*) As to compensation payable to the tenant for damage by game, see Agricultural Holdings Act, 1923, s. 11; "game" in this section means deer, pheasants, partridges, grouse and black game, see s. 11 (5).

(*d*) See *ante*, p. 918, note (*c*).

(*e*) Add if appropriate, "except by sub-lettg the cottages to weekly tenants," and "nor take in any horses, cattle, or sheep to graze on the premes." Letting the grass keep of pasture lands is a breach of a covenant not to permit any other person to use or occupy any part of the demised premises: *Richards* v. *Davies*, [1921] 1 Ch. 90; but *semble* that agistment is not a breach of such a covenant: *Ibid.*; and see *ante*, p. 809, note (*c*). As to forfeiture, see *ante*, p. 816, note (*b*).

(*f*) As to what are improvements, see *Meux* v. *Cobley*, [1892] 2 Ch. 253.

been executed upon the demised premes durg the precedg yr with full parlars of the cost throf, & of each item of expenditure in respt throf with the dates of pchase of any materials pchased for that ppose, & the names of each pson from whom the same shl have been pchased, & shl on request, produce to the lessor, or his agent, all vouchers & receipts for the sums expended.

As to mode of cultivation at end of tenancy (*g*).

31. And also will not sow or plant after notice to quit has been given or received any pt of the demised premes with any crop of any of the descripons commonly called white or exhaustg crops, includg thrin wheat, oats, barley, & rye, in succession to any similar crop or plant a crop of potatoes in any field in which potatoes have been grown the preceding year: And further will at the commencement of the last yr of the tenancy sow such pt of the land as shl have been cultivated for green crops or fallow, & pperly manured in the precedg season, with a sufft quantity of good clover or other grass seeds, & pperly harrow in the same: Provd that on this covt being duly pformed, the lessor shl pay for such clover & grass seeds as shl be sown in the last yr of the tenancy, & on wch no cattle, sheep, or other live stk shl have been depastured, the amt so to be pd to be settled in case of dispute by arbitron: And further will leave in the last yr of the tenancy (subjt as hrin mentd), pperly fallowed & sown with turnips or other root crop or green crop pperly hoed & managed, the one-fourth pt of the arable lands hby demised on being pd for the labour & seed pperly bestowed on the sd land, the amt so to be pd to be settled in case of dispute by arbitron: Provd that the lessor or the incomg tenant may durg the last yr of the tenancy if he think fit, enter & make the fallows, & the lessee will in such case permit him, with his servants, carts, horses, ploughs,

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(*g*) If it is desired to impose any restrictions on the mode of cultivation except in respect of any period after notice to quit has been given or received, the provisions of the Act of 1923, s. 30, as to freedom of cropping and disposal of produce must be borne in mind, and after the first two words of this clause the words "so far as the same is not inconsistent with section 30 of the Agricultural Holdings Act, 1923," may be inserted. This form and the next two forms are suitable for the case of a Michaelmas letting. They can be adapted to meet any particular local custom. As to the customs of the various counties, see Woodfall, L. & T., 21st ed., p. 928 *et seq.*; Dixon's Law of the Farm, 6th ed., App. II.

& other implemts, to enter upon such lands left to be fallowed, at any time or times after the commencemt of the last yr of the tenancy, for the ppose of breakg up, ploughg, fallowg, manurg, sowg, & orwise preparg the same in the usual course of agriculture: AND FURTHER will leave at the expiron of the tenancy one sixth pt of the arable land in clover ley of one yr's continuce only, & permit the incomg tenant, if he shl so desire, at any time or times after the 24th day of August next precedg the expiron of the tenancy, to enter upon, break up, plough, fallow, dung, manure, sow, & orwise prepare & manage the lands so to be left in clover ley as he shl think fit.

The same. Another form (*b*).

32. AND ALSO will in the last yr of the tenancy leave all clover, seeds, hay, straw, dung, muck, & manure wch shl be produced on the premes in such yr for the use of the lessor, but will not do any labour or carriage thto witht a direction in writg from him or his agent: AND WILL in the same yr leave one-fourth pt of the arable land eql in goodness to the general average of the whole arable land in a summer fallow or other pper preparon for a wheat crop, one other fourth pt throf in a barley or oat stubble, one other fourth pt throf in a wheat stubble, & the remaing fourth pt throf in a seed ley: AND WILL plough & prepare for the sd wheat crop in a pper mner under the direction of the lessee or his agent, in default whrof it shl be lawful for the lessor, or the incomg tenant, to enter on the demised premes with servants, horses, carts, ploughs, & other necy implemts, & to do such ploughg & preparon: AND ALSO in such last yr will, if desired by the lessor, or his agent, but not orwise sow, roll, & harrow in seeds with any corn wch shl be sown on the sd premes, & not suffer such seeds to be depastured.

To leave unconsumed hay, &c., and to permit sowing.

33. AND WILL leave on the premes all hay, stover, straw, colder, haulm, & fodder (properly taken care of) & also all turnips & other roots produced in the last year of the tenancy & remaining unconsumed. AND WILL leave in the yards, properly turned up in heaps, all manure made on the land in the last year, & not used for the root crops, being pd for such manure on a valuon to be made according to the custom of the county: AND WILL permit the landlord or incomg tenant to sow grass seeds with the summer corn in the last year of the tenancy, and will harrow such seeds in

(*b*) See *ante*, p. 928, note (*g*).

without any allowance, & will give the landlord ten days' notice previous to sowing such summer corn: And will place the crops of corn, grain, or pulse grown in the last year in the stack-yards or fields of the sd premes & thrash out the same in regular succon during the winter season after the determon of the tenancy, the landlord or incomg tenant carting coal & water & finding labour to stack the straw.

Sow wheat in last year (a)

34. And also will, in the autumn bfe the tenancy determines sow wheat at the pper time on all the land, wch in due course ought in that yr to be sown with wheat; but if, at any time after the 31st day of October in the last yr of the tenancy, he shl have failed so to do, or if the landlord or incomg tenant shl at any time be dissatisfied with the mner in wch, or the time at wch, the work is being done, he will, on being required so to do by the landlord or the incomg tenant, immedly deliver to either of them posson of, & permit him to enter upon, all the land required by the landlord or incomg tenant for the ppose of being sown with wheat: And also will, on the 6th day of January bfe the end of the tenancy, deliver to the landlord or incomg tenant, posson of, & permit him to enter & remain upon all the lands to be fallowed, or to be sown with pulse & spring corn, accordg to the pper cultivon of the farm except such lands as are then growg turnips: And also will, on the sd 6th day of January, provide in & upon the farm for the use of the landlord or incomg tenant, from that day until the 25th day of March followg, sufft stablg-room & straw for beddg, with a pper quantity of hay or seeds for the workg horses employed upon the lands given up, the value of such hay & seeds, & the herbage of the land entered upon, to be pd for by the landlord or incomg tenant at feedg prices on a valuon to be made in the usual mner: And also will, on the 14th day of February bfe the end of the tenancy, deliver to the landlord or incomg tenant posson of & permit him to enter upon one half of the turnip land above excepted: or, if the pper proportionate quantity of land shl in breach of this agrmt not be in turnips in the last yr, then so much as wd be eql to one-half of the land that ought to have been in turnips, & will deliver posson of the remr as soon as the turnips are

Give up fallows in January.

And provide stabling for incoming tenant.

Give up half the turnip land in February.

(a) This form and the next two are applicable to a Lady-day tenancy.

eaten off, but the tenant shl not have any claim for eatage in respt of any of the turnip-land delivered up bfe the end of the tenancy: AND LASTLY will permit the landlord & incomg tenant & their agents to do all things necy for carryg these regulons, on the determinon of the tenancy, fully into effect. Permit landlord to carry agreement into effect.

35. AND after notice to quit has been given or received will sow with wheat at the proper time all land which shall be in due course for the same: AND ALSO will sow seeds in the last yr with the wheat or spring corn, & will not turn any stk or sheep into such seeds to feed them injuriously after harvest: AND ALSO will permit the landlord or incomg tenant after the 6th day of January before the end of the tenancy to enter upon so much of the arable land as shall not be in due course for wheat or clover or root crops, & prepare the same for the next year's crops: AND ALSO will at the end of the tenancy leave for the landlord or incomg tenant all hay, straw, & roots remaining unconsumed being pd for the same at consumer's price. The same, shorter form.

36. The tenant may have a waygoing crop to be taken by the landlord at a valuon according to the custom of the country. Waygoing crop.(*b*)

37. AND ALSO will leave, at the end of the tenancy, two-seventh pts of the arable land in a fit state, & pper tilth for a wheat season & the remainder in eql proportions of clover ley, podware, mangold, & rape. Cultivation at end of tenancy.

38. AND ALSO will allow the incomg tenant, after the harvest in the last yr of the tenancy, to enter the stubbles & plough the same in case the outgoing tenant is unable or unwillg to pform the work required to be done by the new tenant. After harvest to allow incoming tenant to plough.

39. AND ALSO will leave one-half of the arable land, on the expiron of the tenancy, clean & in good condon & fit to plant with white straw crops, and will, durg the previous summer, fallow one moiety of such half pt (with or witht green crops); and will sow the other moiety throf (after being manured) wholly with clover or mixed grass seeds, or pt in clover & the rest beans or peas, none of the clover or other grasses havg been allowed to stand for seed. On termination one-half land to be ready for white straw crop.

40. AND ALSO will sow one-fourth of the arable land in the spring of the yr precedg the terminon of the tenancy with One-fourth land to be sown with clover.

(*b*) As to awaygoing crops, see Redman, L. & T., 7th ed., p. 648 *et seq.*; Woodfall, L. & T. 21st ed., p. 934 *et seq.*

clover or other pper mixed-grass seeds upon land fallowed the previous yr & clean ; the seeds, sowg, & harrowg to be pd for by the landlord or his incomg tenant provd they have not been grazed after harvest.

Not more than one-fourth of land to require fallowing.

41. And also will leave the land in such condon that not more than one-fourth of the arable land shl require to be fallowed in the yr after the terminon of the tenancy, nor require an outlay of more than fifty shillings per acre to clean it, so that if it requires less than that sum the landlord or his incomg tenant shl pay the difference, if more than that sum the tenant shl pay it.

To deliver up.

42. And also will at the determinon of this demise deliver up the demised premes & all addons thereto [except such fixtures & bldgs (*a*) as the lessee shl be entitled to remove under or by virtue of any Act of Parliamt, & wch the lessor shl not have elected to pchase] in such good & complete repair, & in such state & condon as the same ought to be in, havg regard to the covts hrinbfe contd.

43. *Covt not to allow rights of way & other easements to be acquired,* pp. 805 *et seq., & to keep alive existing easements.*

LESSOR'S COVENANTS (*b*).

To keep the exterior of the farmhouse in repair.

1. That he, the lessor, will at all times durg the continuce of the tenancy repair & keep in repair the exterior, & when necy paint the external wood & iron-work of the farmhouse.

To rebuild buildings burnt down.

2. And also that if the farmhouse, bldgs, & barns, for the time being standg on the demised premes, or any of them, or any pt throf resply, shl at any time durg the tenancy be destroyed or damaged by fire, the lessor will within —— calr months thrafter, at his own cost sufftly rebuild, restore, & repair the same.

(*a*) See Landlord and Tenant Act, 1851, s. 3 ; the Agricultural Holdings Act, 1923, ss. 22, 48 (1) (ii.); Foa, 6th ed., p. 775 ; Woodfall, 21st ed., 794 *et seq.* The parties may contract out of these provisions of the Act of 1923 : *Premier Dairies* v. *Garlick,* [1920] 2 Ch. 17. As to the omission of notice by a tenant of his intention to remove a fixture : see *Re Harvey & Mann,* 89 L. J. K. B. 687.

As to the liability of a tenant in the absence of an express covenant : see *Williams* v. *Lewis,* [1915] 3 K. B. 493 ; *Wedd* v. *Porter,* [1916] 2 K. B. 91.

(*b*) See *ante,* p. 811, note (*d*).

3. And also will at all times durg the tenancy, when required & on receivg reasble notice, provide within —— miles of the farmhouse rough timber [bricks, slates, tiles, lime, nails, & iron, except iron gates & hurdles] for repairs required on the sd demised premes. To provide materials for repairs.

4. And also will at all times durg the tenancy allow the lessee, at his own expse, to get & carry away so much [stone or gravel from any quarry & so much] chalk from any pit on the premes as may be required for use on the demised premes. To allow lessee to get chalk.

5. And also will allow the lessee to destroy & take rabbits in the hedges or banks adjoing the demised premes & belonging to the lessor, at any time durg the yr by ferretg with nets, witht dog or gun, [& by the use of dogs & guns from the first day of February to the first day of April in each yr, & by means of spring traps set in the rabbit holes & not above ground betn the thirtieth day of September & the first day of April, provd that the lessee shl communicate in writg to the lessor, the names of the psons to be employed for trappg.] Provd also that the ferretg [or shootg] party shl never exceed —— in number, & that if any holes are made they shl be pperly filled in & levelled after ferretg, & that if hedges or banks shl be damaged they shl be at once repaired by the lessee, at his own expse. To allow lessee to destroy rabbits (*a*).

6. And also will on the determon of the tenancy pay or allow to the lessee compenson, the amt throf to be determined Compensation at end of lease for unexhausted improvements (*b*).

(*a*) The rights given by this clause to the lessee, which of course are in addition to those given by the Ground Game Acts, 1880 and 1906, are more beneficial to him than those given by the Acts. The Agricultural Holdings Act, 1923, s. 11, provides for compensation to the tenant for damage done by game as defined by sub-s. (5).

(*b*) The right of a tenant to compensation for improvements on holdings generally is now regulated by the Agricultural Holdings Act, 1923, ss. 1—4, 9, 20, 50, and 54, and the first schedule, and on market gardens by ss. 48 and 49 and the third schedule: see *Re Masters and Duveen*, [1923] 2 K. B. 729. Improvements executed by a tenant (for which a general right to compensation is conferred by s. 1 (1) of the Act of 1923), are divided into three classes: (i.) Those in the first part of the first schedule to the Act for which is required the consent of the landlord, which may be given "unconditionally or upon such terms as to compensation or otherwise as may be agreed upon" (s. 2). In some cases it may be convenient to embody the general terms of compensation in the lease, though this cannot affect the landlord's right to impose any other terms as a condition of his consent. (ii.) Those in the second part of the first schedule to the Act which includes drainage only, as to which previous notice must be given to the landlord, Compensation.

in case of dispute by arbitron (*c*), for any matters to which he may be entitled to compenson under this lease, or under the custom

on which the terms, "as to compensation or otherwise," may be agreed upon, or the landlord may execute the work himself; failing either of which the tenant will be entitled to compensation under the Act (s. 3). The same section expressly provides that the notice may be dispensed with and the agreement as to compensation embodied in the lease. (iii.) Those in the third part of the first schedule of the Act as to which the consent of the landlord is not required, but by s. 4, in the case of agreements entered into before the 1st of January, 1921, and of holdings let as market gardens, see ss. 48 and 49, where any agreement in writing secures to the tenant "fair and reasonable compensation," compensation will be payable under the agreement and not under the Act. Where s. 4 applies the terms of compensation can be fixed by the lease in reference to an improvement mentioned in the third schedule, but must be "fair and reasonable": in default of agreement the difference is to be settled by arbitration, ss. 5, 16. Compensation is also payable to a tenant in respect of his having increased the value of the holding by the continuous adoption of some more beneficial standard of farming than that required by the contract of tenancy (s. 9). The landlord is entitled to compensation for deterioration of the holding if he has before the termination of the tenancy given notice in writing to the tenant of his intention to claim such compensation (s. 10), but such notice is not required where the claim is founded on breach of the contract of tenancy, cf. *Re Arden and Rutter*, [1923] 2 K. B. 865. The tenant is also entitled to compensation for damage by game (s. 11), and subject to his giving notice in writing within two months after he has received notice to quit, for disturbance (ss. 12, 13), cf. *Swinburne* v. *Andrews*, [1923] 2 K. B. 483, and in certain cases compensation is also payable for disturbance in respect of dwelling-houses and gardens attached, occupied by agricultural workers (s. 14). Section 16 (2) provides that a claim for compensation shall cease to be enforceable after two months from the termination of the tenancy unless particulars of the claim have been given before the expiration of that period, unless the claim relates to part of the holding of which the tenant lawfully remains in occupation: see *Swinburne* v. *Andrews*, *supra*; *Jones* v. *Evans*, [1923] 1 K. B. 12. By s. 50 of the Act, subject to the provisions of the Act, any contract (whether under seal or not) made by a tenant by virtue of which his right to claim compensation under the Act is taken away or limited is to that extent rendered void. A covenant by the tenant to execute the improvements would not of course affect his right to compensation; and see s. 1 (1) of the Act. By s. 8 the tenant (other than a tenant who before beginning has served a notice and the landlord has assented or within a month failed to object, and a tenant from year to year in the case mentioned in the provisoes) is not entitled to compensation for any improvements (except "manures") begun within one year before he quits his holding or at any time after he has given or received final notice to quit, and if he holds as a lessee within one year before the determination of

Exclusion of compensation.

Improvements begun in last year of tenancy.

Set-off.

(*c*) As to arbitration, see Agricultural Holdings Act, 1923, s. 16. The Arbitration Act, 1889, does not apply to any arbitration under the Agricultural Holdings Act, 1923, see s. 16 (5); see *post*, p. 939.

Arbitration.

of the country or the terms of his entry & such compenson shall be substituted for compenson payable under the Agricultural

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his lease; and s. 1 (2) of the Act provides for a set-off against the claim of the tenant of any benefit given or allowed by the landlord in consideration of the tenant executing the improvements, and s. 16 provides for any claim by the tenant against the landlord for compensation or breach of contract or by the landlord in respect of wrongful waste or breach of covenant by the tenant being determined, notwithstanding any agreement providing for a different method of arbitration, by a single arbitrator in accordance with the provisions of the second schedule.

Except as to the definite improvements comprised in the Act, the rights of the landlord or tenant under contract or custom are unaffected (see s. 54).

Application of Acts.

As to what holdings are within the Act of 1923, see s. 57, and *Re Lancaster & Macnamara*, [1918] 2 K. B. 472; and, where the contract for tenancy was made since the 31st December, 1920, the Agricultural Holdings Act, 1923, s. 33. As to whether within the repealed Act of 1908 they apply to a tenancy for a year certain, see 36 Sol. J. 358, 365. They apply to a tenancy from year to year notwithstanding there is a provision for determining the tenancy at any time: *King* v. *Eversfield*, [1897] 2 Q. B. 475.

The landlord, on paying to the tenant the amount due to him for compensation under the Act, can obtain from the Ministry of Agriculture and Fisheries, a charge, which is a land charge to be registered under the Land Charges Act, 1925, s. 10 (1), Class (A), on the holding to the amount so paid or expended, see s. 20, and the right to obtain such a charge extends to the executors, administrators and assigns of a landlord tenant for life. Such a charge will be effectual as against a remainderman, see *Gough* v. *Gough*, [1891] 2 Q. B. 665. As to charge of compensation against a landlord who is a trustee, see s. 41.

Capital money arising under the S. L. Act, 1925, may be applied in payment of any money expended and costs incurred by a landlord under or in pursuance of the Act of 1923 or any enactment thereby repealed, or any custom or agreement in executing improvements within parts 1 and 2 of the first schedule, or may be applied in discharge of any charge created thereby. For the provisions of the Act as to fixtures, &c., see ss. 22, 48 (1) (ii), and *ante*, p. 932.

As to holdings under two acres, see Allotments Acts, 1922 and 1925; and as to allotments and small holdings, see Small Holdings, &c., Act, 1908, ss. 47, 61; and as to arbitration thereunder, see s. 58. As to market gardens, see *ante*, p. 925.

Compensation from mortgagee.

By the Agricultural Holdings Act, 1923, s. 15, a tenant from a mortgagor under an agreement *not* binding on the mortgagee is entitled to compensation for improvements as against a mortgagee who takes possession; but the amount may be set off against any rent or other sum due from him in respect of the land; and by sub-s. 2 the mortgagee must give the tenant six months' notice in writing before depriving him of possession, and must then allow him compensation for his crops and improvements, whether the agreement was for a tenancy from year to year or for a term of years not exceeding 21, at a rack-rent. Under sub-s. 3 any sum due to the occupier for compensation if not set off, will against the mortgagee be charged and

Holdings Act, 1923, in all cases in which such substitution is permitted by the sd Act. For any matters in respect of which such substitution is not permitted by the sd Act, the lessee shall be pd such compenson as he is entitled to under the sd Act.

For quiet enjoyment (*a*).

7. And also that the lessee, paying the sd yrly rent of £——, & the sd addonal rents in case the same shl be incurred, & pformg all the covts & agrmts on the pt of the lessee hrin contained, may quietly hold the demised premes durg the continuce of the tenancy (*b*) witht any interruption by the lessor or any pson clamg under him.

PROVISOES.

Proviso as to sales under a distress of things covenanted to be consumed on the premises.

1. Provd always, & these psnts are upon this condon, that in case the lessor shl distrain for rent (*c*), it shl be lawful for him to sell & dispose of the distress or distresses, or any pt or pts throf, subjt to a condon that all hay, straw, fodder, haulm, turnips, mangold, compost, & manure, *the words should comprise all the produce of the farm covted to be consumed on the premes*, shl be consumed on the premes, & that on a sale being made, subjt to such condons, the lessees shl allow the use of the out-bldgs, barns, yards & fields to the pchaser, free from charge, for the ppose of threshg out or consumg the same.

Power to lessor to

2. Provd always, &c., that it shl be lawful for the lessor at

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recovered in accordance with the provisions of the Act relating to the recovery of compensation from a landlord who is a trustee: see s. 41.

(*a*) See *ante*, p. 814, notes, as to this covenant.

(*b*) Add here, in the case of a Michaelmas tenancy "& the barns & stack-yards until the —— day of —— next after the expiron of the sd term for the stackg, threshg, & dressg the last yr's crop."

(*c*) See Sale of Farming Stock Act, 1816, s. 11; *Ridgway* v. *Lord Strafford*, 6 Ex. 404; *Hawkins* v. *Walrond*, 1 C. P. D. 280; *Lybbe* v. *Hart*, 29 Ch. D. 8. As to the law of distress, see *ante*, p. 821, note (*c*); *Simpson* v. *Hartopp*, 1 Smith's L. C., 12th ed., 493 *et seq.*; and in particular with reference to agricultural holdings, the Agricultural Holdings Act, 1923, ss. 34—37.

any time or times to resume posson of & determine the tenancy of the lessee as to any portion or portions [not exceedg in the whole —— acres] of the sd demised premes for the ppose of sellg or usg or lettg the same for pposes other than agricultural or as allotmts [or for any of the pposes mentd in s. 27 of the Agricultural Holdings Act, 1923] on givg to the lessee one calr month's notice of his intention in that behalf, in wch case the lessor shl allow to the lessee a proportionate abatemt (to be fixed in case of dispute by arbitron) of the rent hby reserved in respt of the land posson of wch shl be so resumed, *or*, " shl make compenson for the same by an abatemt of rent or orwise in mner provd by the sd section 27 " [& the covts & provons hrin contained shl be applicable to the land as to wch the tenancy shl be so determined in the same mner as far as may be as if the demise throf had expired by effluxion of time]. [PROVD ALWAYS, &c., that in case the powers given by the last precedg proviso shl be exercised by the lessor the lessee shl be at liberty to put an end to this psnt demise on givg to the lessor six calr months' notice in writg in that behalf, such notice to be given within —— days after the receipt of the notice mentd in the precedg proviso.]

resume possession of part of land (*d*).

3. PROVD, &c., that the notice required to be given by the lessee under s. 3 (1) of the Agricultural Holdings Act, 1923, as to any improvemt within pt 2 of the first schdle to the sd Act, shl be dispensed with, & that if & when the lessee shl be entitled under the Agricultural Holdings Act, 1923, to receive compenson from the lessor in respt of any such improvemt executed by the lessee upon the demised premes, such compenson shl be determined accordg to the rules & allowces contained in the

Proviso fixing the terms of compensation under the Agricultural Holdings Act, 1923 (*a*).

(*d*) Where notice is given under such a provision as the above in a lease, the tenancy may be terminated before the expiration of twelve months from the end of the current year: see the Agricultural Holdings Act, 1923, s. 25. A tenant who accepts a notice to quit a part of his holding under s. 27 of the Act as a notice to quit the entire holding is not entitled to compensation for disturbance if the part of the holding affected by the notice is less than one-fourth of the original holding or, the holding as proposed to be diminished is reasonably capable of being cultivated as a separate holding: see s. 12 (7) (*d*). See also, as to giving notice to quit in respect of part of a holding, L. P. Act, 1925, s. 140 (2), as amended by the L. P. (Amendment) Act, 1926, s. 2.

(*a*) See *ante*, p. 933, note (*b*).

schdle hto, & be payable on the expiron of the tenancy or as soon thrafter as the same shl be ascertained.

As to claims for compensation for damage done by game (*b*).

4. And it is hby agrd that notices in writg of claims for compenson for damage to crops from game shl be given to the lessor within one month after the expiron of the yr ending on the 31st day of August instead of at the end of the calr yr.

Market garden (*c*).

5. And it is hby agrd that nothing hrin contained shall be deemed to be an agreement by the landlord that the sd demised premes or any pt throf shl be let or treated as a market garden.

Proviso that agreed compensation is to be substituted for statutory compensation (*d*).

6. Provd always, & it is hby agrd & declared that the compenson hrinbfe agrd to be pd by the lessor to the lessee in respt of improvemts or any other matters at the end of the tenancy is intended to & shl be in substiton for any compenson wch the lessee shl be entitled to receive or claim under the Agricultural Holdings Act, 1923, or any other statute in respt of any improvemts executed by him upon the demised premes.

Proviso that remedies given to lessor are cumulative.

7. Provd always, & it is hby agrd that any powers or remedies hby expressedly given to the lessor, in the event of any breach by the lessee of any of the covts hrinbfe contd, shl be in addon to, & not in substiton for the rights & remedies by law given to the lessor, in respt of or consequent upon any such breach, whether by proceedings to recover posson of the demised premes, or to recover damages or orwise, all wch rights & remedies may be enforced & pursued in due course of law accordgly: [Provd always that the clause lastly hrinbfe

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(*b*) The Act of 1923, s. 11 (5), defines "game" for purposes of that section to be "deer, pheasants, partridges, grouse and black game."

(*c*) See Agricultural Holdings Act, 1923, s. 48 (1), for the necessity of an agreement in writing in the case of tenancies commencing after 1895 to entitle the tenant to compensation for improvements within Schedule III. to the Act: see *Re Masters and Duveen*, [1923] 2 K. B. 729. As to tenancies current on January 1, 1896, where the holding was at that date in cultivation as a market garden with the knowledge of the landlord, see s. 48 (2). As to what amounts to knowledge or consent by the landlord in such a case, see *Re Morse & Dixon*, 87 L. J. K. B. 1.

As to refusal by the landlord, or failure within a reasonable time to agree, see s. 49.

(*d*) See *ante*, p. 933, note (*b*). This proviso can now only operate to a limited extent, see Agricultural Holdings Act, 1923, ss. 2, 3, 49 (6); and will not generally be required.

contd shl not qualify or affect the arbitron clause hrinar contained.]

Set-off of landlord's claims against tenant's claim for compensation (*f*).

8. Any sums due to the landlord from the tenant in respt of rent or any breach by the tenant of any of the agrmts on his part hrin contained, or for any injury or deterioration of the holding or orwise, shl be deducted from any sums payable to the tenant at the termination of the tenancy by the landlord or incoming tenant, or shl be recoverable by action or orwise as the landlord may deem fit.

Cost of making record under s. 32 of A. H. Act, 1923.

9. If at any time during the tenancy hby created the landlord or the tenant shl require a record of the condon of the holding to be made pursuant to s. 32 of the Agricultural Holdings Act, 1923, the cost of making such record shl be borne by the party requiring the same.

Arbitration clause (*g*).

10. ANY DISPUTE or question wch may arise betn the pties resptg their rights or liabilities under these psnts or in relation to the contract of tenancy hby made shl be referred to the arbitron of a single arbitrator, & such arbitron shl be regulated by the provons in that behalf contained in the Agricultural Holdings Act, 1923.

(*f*) As to the importance of reserving the right of set-off of the landlord's claims against the tenant's claim for compensation, etc., see *Re Wilson, Ex parte Lord Hastings*, 62 L. J. Q. B. 628; *Stafford* v. *Gardner*, L. R. 7 C. P. 242.

(*g*) Strictly this clause need not be inserted, since s. 16 (5) of the Agricultural Holdings Act, 1923, provides that the Arbitration Act, 1889, shall not apply to any arbitration under the former Act, and s. 16 (1) provides that all questions must be referred to a single arbitrator notwithstanding any agreement in the contract of tenancy or otherwise for a different method of arbitration. In the construction of this clause the difference between arbitration and valuation must be remembered; see *Re Dawdy & Hartcup*, 15 Q. B. D. 426, and *ante*, p. 174. In practice compensation for improvements claimed by a tenant is usually settled by valuers, one appointed by the landlord and the other by the tenant, and arbitration need only be resorted to if they cannot agree. As to how far s. 16 takes away either the landlord's or tenant's common law remedies by action, see *Simpson* v. *Batey*, [1924] 2 K. B. 666; *Rex* v. *Powell, Ex parte Camden*, [1925] 1 K. B. 641; *Lowther* v. *Clifford*, 95 L. J. K. B. 576.

PRECEDENTS (*a*).

I.

AGREEMENT *for a* YEARLY TENANCY. *Short form.*

Parties. AN AGRMT made this —— day of ——, ——, BETN A., of, &c. (hrinar called the landlord, wch expression shl include, &c., *see* p. 778), of the one pt, & B., of, &c. (hrinar called the tenant, wch expression shl include, &c.), of the other pt.

Agreement to let. **1.** THE LANDLORD agrees to let, & the tenant agrees to take THE MESSE, farm, & lands, called —— Farm, situate in the Parish of ——, in the County of ——, the parlars whrof are specified in the schdle hto, *reference if need be to plan*, as now occupied by ——, with the appurts. *Reservon of timber & minerals*, p. 783 *or* p. 917, *& sportg, if intended*, p. 917. THE TENANCY to be from the —— day of ——, from yr to yr, until it is determined at the end of the second or any subsequent yr by either party giving to the other not less than twelve calr months' notice (*b*) in writg. AT THE yrly rent of £——, payable half yrly, [qtrly] on, &c., the first paymt to be made on the —— day of —— next [& the last paymt to be made in advance one calr month bfe the expiron of the tenancy.]

Parcels.

From year to year.

Rent.

Tenant's agreements. AND THE TENANT HBY AGREES

To pay rent and taxes. **2.** To PAY the rent at the time, & in mner afsd.

3. To PAY all rates & taxes, except [land tax, tithe rentcharge, &] landlords' ppty tax.

As to agricultural leases. (*a*) As to the obligations implied by law on a yearly agricultural tenant in the absence of an express agreement: see *Williams* v. *Lewis*, [1915] 3 K. B. 493; *Wedd* v. *Porter*, [1916] 2 K. B. 91. The lessee takes the property as he finds it and there is no duty on the landlord to see that trees growing on his land at the time of the demise are not harmful to the tenant: *Cheater* v. *Cater*, [1918] 1 K. B. 247.

(*b*) See the Agricultural Holdings Act, 1923, s. 25, which replaces Agricultural Holdings Act, 1908, s. 22: *Barlow* v. *Teal*, 15 Q. B. D. 501; *Van Grutten* v. *Trevenen*, [1902] 2 K. B. 82. As to leases by limited owners, see *ante*, p. 830. As to the necessary notice by a mortgagee to a tenant under a yearly tenancy or a lease by the mortgagor not binding on the mortgagee, and compensation for improvements in such a case, see *ante*, p. 935, note.

4. To KEEP the farmhouse & bldgs, & all hedges, fences, & gates, & leave the same at the end of the tenancy in good tenantable repair, he being allowed rough timber for repairs within a distance of —— miles from the farmhouse. Repair.

5. To cultivate & manage the farm in a good & husband-like manner & according to the rules of good husbandry, & not to injure or deteriorate the holding or permit the same to be injured or deteriorated. To cultivate in proper manner.

6. To CONSUME all the hay, straw, & root-crops upon the farm. Consume produce on farm (*bb*).

7. To SPREAD the whole of the manure & muck yrly upon the land. Spread manure.

8. To PRESERVE all timber, timber-like trees, & tellers. Preserve timber.

9. To LEAVE one-third of the arable land in fallow [tare or pea-grattan] in a clean state for wheat at the end of the tenancy for the incomg tenant. Leave fallow.

10. NOT TO grow two successive white crops on the same pce of land. As to white crops (*bb*).

11. NOT TO mow any grass land in two successive yrs. Grass land.

12. NOT TO break up grass land, witht the consent in writg of the landlord or his agent, under a penalty of £50 per acre (*c*), & in like proportion for any less quantity than an acre, such penalty to be recoverable immedly. Not to break up grass land.

13. NOT TO cut or lop any timber or timber-like trees. Timber.

14. AFTER HE has given or reced notice to quit, not to cart any manure or muck on to the land, witht givg to the landlord or his agent, six days' notice in writg of his intention to do so. Manure.

15. NOT TO destroy any game or rabbits except as authorised by the Ground Game Act, 1880, and the Ground Game (Amendment) Act, 1906. Game.

16. NOT TO assn or under-let or part with the posson of the premes or any pt throf witht the written consent of the landlord, or his agent. Not to assign.

(*bb*) This agreement can only take effect subject to the provisions of s. 30 of the Agricultural Holdings Act, 1923, which, however, does not apply to the last year of the tenancy. The section allows the tenant to crop the arable land and dispose of the produce of the holding, except in the last year of his tenancy, as he pleases, but if he disregards his agreement and takes advantage of the section, he must comply with the proviso to s. 3, sub-s. 1, or be liable to damages under sub-s. 2.

(*c*) See *ante*, p. 923, note (*b*).

Landlord to have right of entry.

17. That the landlord shl have ingress & egress, for himself & all psons authorised by him, to the land & bldgs, to inspect the state of repair & condon of the premes, & to cut timber & for sportg & preservg game.

And the landlord hby agrees

Landlord's agreements.

18. To put the farmhouse & bldgs in good tenantable repair at the commencemt of the tenancy.

To repair.

19. To find rough timber for repairs within —— miles from the farmhouse.

Find timber.

20. *Set-off of landlord's claims against tenant's claim for compensation,* p. 939, f. **8.**

21. *Cost of making record of holding,* p. 939, f. **9.**

And it is hby also agrd

Proviso for re-entry (*b*).

22. That the landlord shl have a right of re-entry on non-paymt of the rent for twenty-one days, whether legally demanded or not, or breach of any of the tenant's agrmts. In witness, &c.

[*Schdle of Parcels.*]

II.

LEASE *for a* Term.

Parties.

THIS LEASE made the —— day of ——, Betn A., of, &c. (hrinar called the lessor, wch expression, &c., *see* p. 778), of the one pt, & B., of, &c., farmer (hrinar called the lessee, wch expression, &c.), of the other pt, WITNESSETH as follows:—

Witnesseth.

Demise.

Parcels.

1. In conson of the rents & covts on the pt of the lessee hrinar reserved & contained, the lessor doth hby demise unto the lessee All that messe or farmhouse & all those pieces of land situate in the Parish of ——, in the County of ——, known as —— Farm, as the same are now in the occupon of ——, & wch are more parlarly described in the schdle hto, *reference if need be to plan,* the numbers in wch schdle [& plan] correspond with the numbers in the Ordnance Map of the sd Parish. *Reservon of timber,* p. 915; *minerals,* p. 917; *sportg,* p. 917.

(*b*) As to relief against forfeiture, the L. P. Act, 1925, provisions as to bankruptcy and execution do not apply to leases of agricultural land: see s. 146 (9) (*a*).

Habendum.

To lessee for term.

To HOLD the premes UNTO the lessee from the —— day of ——, for the term of —— yrs (*c*), *Reservon of fixed rent*, p. 784; [*penal rents*, p. 918; *improvemt rents*, p. 919]; *the rents to be pd clear of deductions*, p. 920.

Lessee's covenants.

2. *Covts by lessee*, p. 788.

(i.) *To pay rent*, p. 788, f. **3**.

(ii.) *To pay rates, taxes & outgoings*, p. 789, f. **4**.

(iii.) *To reside*, p. 921, f. **6**.

[(iv.) *To pay for draing*, p. 921, f. **4**.]

(v.) *To repair*, p. 920, f. **1**.

(vi.) *Not to alter the condon of the premises*, p. 921, f. **5**.

(vii.) *To insure & rebuild*, p. 797, f. **26**.

(viii.) *To clean out ditches*, p. 921, f. **3**.

(ix.) *To cultivate according to custom*, p. 921, f. **7**.

(x.) *Insert the special stipulons (if any) to be observed, as to cropping, then of cultivation of pasture land*, pp. 922, 923; *& as to the cutting of underwood & preservon of timber, &c.*, p. 925; *the details of these clauses in each case will depend on the circumstances*.

[(xi.) *To preserve hedges*, p. 925, f. **21**.]

(xii.) *To allow lessor to inspect*, p. 926, f. **26**.

[(xiii.) *To keep a field book*, p. 926, f. **25**.]

(xiv.) *To protect game*, p. 927, f. **27**.

(xv.) *Not to assign or underlet*, p. 927, f. **29**.

(xvi.) *Covenant* (*d*) *as to method of cultivon at the end of tenancy, see* pp. 928, 929.

(xvii.) *Not to allow rights of way & other easemts to be obstructed*, p. 804, f. **44**.

(xviii.) *To deliver up at end of term*, p. 795, f. **17**.

3. *Power of re-entry*, p. 817, f. **1**.

(*c*) It must be remembered that except in the case of tenancies granted before the 1st January, 1921, unless notice in writing of intention to terminate the tenancy has been given by one party to the other not more than two years or less than one year before the date of the expiration of the term, the tenancy will continue as a tenancy from year to year on the terms of the original tenancy, see s. 23 of the Agricultural Holdings Act, 1923: *Edell* v. *Dulieu*, [1924] A. C. 38.

(*d*) The details of these clauses in each case must be settled, having reference not only to the nature of the farm and the county in which it is situated, but also to whether the tenant is restricted as to the mode of a cultivation during the earlier part of the term, and whether the tenancy is Michaelmas or Lady Day letting, see *ante*, p. 928, note (*g*), p. 930, note (*a*).

4. *Proviso as to sales under distress of things covted to be consumed on the premes*, p. 926, f. **1**.

Lessor's covenants.

5. *Covenants by lessor*, p. 811.

(i.) *To provide materials for repairs*, p. 933, f. **3**.

(ii.) *To allow tenant to destroy rabbits*, p. 934, f. **5**.

(iii.) *To compensate for unexhausted improvemts, see* p. 933, f. **6**.

(iv.) *For quiet enjoymt*, p. 936, f. **7**.

6. *Set-off of landlord's claims*, p. 939, f. **8**.

7. *Costs of record of holding*, p. 939, f. **9**.

8. *Arbitration clause*, p. 939, f. **10**.

IN WITNESS, &c.

[*Schdle of Parcels.*]

III.

LEASE *to a* COUNTY COUNCIL *for* SMALL HOLDINGS (*a*).

Parties.

THIS LEASE made the —— day of ——, BETN A., of, &c. (hrinar called the lessor, wch expression, &c., *see* p. 778), of the one pt, & the —— County Council (hrinar called the Council, wch expression shl include their succors & assns where the context so admits) of the other pt, WITNESSETH

Witnesseth.

that in conson of the rent & covts by the Council hrinar reserved & contained, the lessor doth hby demise unto the Council ALL THAT pasture [*or* arable] field situate in the Parish of —— in the County of —— adjoining the road from —— to ——, containing —— acres, —— roods & —— perches, or thereabouts, & known as ——, wch premes are delineated on the plan (*b*) hto annexed & thrin coloured red, such plan

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(*a*) A County Council may take on lease land, whether situate within or without their county, for the purpose of providing small holdings, as defined in the Small Holdings, &c., Act, 1908, s. 61 (1), for persons who desire to lease and will themselves cultivate the holdings: s. 7 (1). In default of agreement land may be hired compulsorily: s. 7 (2); and for the procedure for the compulsory hiring of land, see s. 39 (2): *Knowles* v. *Salford Corpn.*, [1922] 1 Ch. 328. While a lease for a small holding is pending the Council may manage the land as they think fit: s. 16 (2). As to the powers of limited owners to lease to a County Council for small holdings, see s. 40. The rent must be such that in the opinion of the Council all expenses incurred will be recouped out of the rents of the small holdings: s. 7 (3).

As to compensation to a tenant of a small holding on the determination of his tenancy, see the Act of 1908, s. 47.

(*b*) As to use of plan, see *ante*, p. 483, note (*d*).

being copied from the Ordnance Survey Map, dated in the yr —— of the sd Parish of ——. *Reservon of timber*, p. 915; *minerals*, p. 917; *sporting*, p. 917: To HOLD the premes UNTO the Council from the —— day of —— for the term of —— yrs, *Reservon of rent*, p. 784, f. **1**.

AND THE COUNCIL HBY COVT WITH THE LESSOR

1. *To pay rent*, p. 788, f. **3**.

2. *To pay rates, taxes & outgoings*, p. 789, f. **4**.

3. AND WILL on demand pay to the lessor all sums that may have been pd or be hrafter pd or payable by the lessor to the existing tenant of the sd field in respt of the determinon of his tenancy thrin (whether the sums pd or payable have been or shl be legally recoverable by such tenant or not, or have been or shl be ascertained by valuon or arbitron or by agrmts betn the lessor & such tenant or orwise, or have been or shl be claimed as compenson for determinon of the tenancy or for such field or any pt throf being severed from others, or for any trade loss occasioned by or arising out of any such determinon, disturbance or severance as afsd, or have been or shl be claimed under any tenant right, custom of the country, tenancy agrmt or any statute as allowances or compenson for bldgs, improvemts, ditching, heaps of compost, cake & feeding stuffs, & unexhausted value of top dressing, or orwise) & will pay & indemnify the lessor against all costs, damages, claims & demands that have been or may hrafter be incurred or made in anywise relating to any such claim as afsd. To pay compensation for disturbance.

4. *To repair*, p. 920, f. **1**, *mutatis mutandis*.

5. *To clean out ditches*, p. 921, f. **3**.

6. AND WILL not cut, lop, top, drive nails into or orwise injure or permit to be injured any timber or timber-like trees. Not to damage timber.

7. AND WILL keep & maintain, or cause to be kept & maintained, the sd field at all times in good condon, & clean & free from thistles & noxious weeds, & well & suitably cultivated, cropped & mended. To keep land in good condition.

8. *Insert the special stipulons (if any) to be observed as to cropping & cultivon, see* p. 922, f. **8**, *& as to method of cultivon at the end of tenancy, see* pp. 928, 930, *using the words* " or permit to be " *and* " or cause to be " *so as to make the Council responsible for the acts or defaults of their sub-tenants.*

9. THAT THE sd field shl not, nor any pt throf, be let, used To use

field only for small holdings.

or treated as a market garden, nor for any ppose other than that of a small holding, & that no trade will be carried on or advertisement board erected on the sd field or any pt throf, & that the Council will not do, or suffer to be done, in or upon the sd field or any pt throf, any act or thing whatsr wch shl be or may be or become a nuisance, damage, injury, annoyance or inconvenience to the lessor or his tenants or the occupiers of any of the adjoining lands or houses or the neighbourhood.

10. *To deliver up at end of term*, p. 932, f. **42.**

11. PROVIDED ALWAYS & it is hby agrd—

(i.) *Power of re-entry*, p. 817, f. **1.**

Arbitration Clause (*a*).

(ii.) THAT WITHT prejudice to any right of action or other remedy of the lessor all compensons, allowance, matters in dispute & differences betn the lessor & the Council shl be referred to arbitron in mner provd by the Agricultural Holdings Act, 1923.

Proviso that compensation shall not be paid for improvements unless the lessor shall have consented to the making thereof (*b*).

(iii.) THAT THE council shl not be entitled, at the terminon of the tenancy on quitting the land, to compenson for any improvement mentd in pt I. or pt II. of the second schdle to the Small Holdings & Allotments Act, 1908, unless the lessor, previously to the execution of the improvemt, shl have consented in writing to the making throf.

IN WITNESS, &c.

IV.

LEASE *of* SPORTING RIGHTS (*c*).

Parties.

THIS LEASE made the —— day of —— betn A., of, &c. (hrinar called the lessor, wch expression shl include the pson or psons for the time being entitled to receive the rent hby reserved where the context so admits), of the one pt, & B., of, &c. (hrinar called the lessee, wch expression, &c., *see* p. 778).

(*a*) This clause is only necessary so far as questions may arise under the lease which are not referred to arbitration under the Small Holdings, &c., Act, 1908, see s. 58.

(*b*) See the Act of 1908, s. 47 (2).

(*c*) As to whether this demise must be by deed, see *Bird* v. *Higginson*, 6 Ad. & El. 824; *Lowe* v. *Adams*, [1901] 2 Ch. 598; *Radcliff* v. *Hayes*, [1907] 1 Ir. R. 101. By virtue of the Ground Game Act, 1880, as amended by the Ground Game Act, 1906, this lease cannot interfere with the right of the tenants in occupation of the land: *Sherrard* v. *Gascoigne*, [1900] 2

of the other pt ; WITNESSETH that in conson of the rents & covts on the pt of the lessee hrinar reserved & contained, the lessor doth demise unto the lessee the exclusive right with friends, servants, & others, of shootg [huntg, coursg, fishg, fowlg], & sportg over, & takg all & all mner of game [woodcocks, snipes, quails, landrails] (*d*), hares, rabbits, wild fowl, & fish [& of trappg vermin] upon & from the lands, woods, & premes described in the schdle hto, subjt as to such of the sd lands, woods, & premes as are in the occupon of tenants of the lessor to the rights conferred upon the sd tenants by their leases or agrmts of tenancy or by law ; WITH power to enter upon all the sd premes for the pposes afsd or for preservg & subjt to the rights of the tenants & occupiers for rearg the game, wild fowl, or fish [& to have & carry away for his own use the game & other animals of the kinds afsd there killed & taken under this demise (*e*)] : And the exclusive use of the bungalow & keepers' & watchers' cottages in the sd schdle mentd, savg & reservg to the lessor full & free right & liberty to cut & fell timber & other trees on the sd premes & to cut down or grub underwood growing thron [but so nevertheless that these rights shl not be exercised in any of the sd woods & plantations durg the season of nestg of game birds] : To HOLD the same unto the lessee for the term of —— yrs, from the —— day of ——, determinable as hrinar

Witnesseth.

Parcels.

Reservation of right to cut timber (*f*).

Reservation of rent.

Q. B. 279; or of the lessor himself when he is in occupation : *Morgan* v. *Jackson*, [1895] 1 Q. B. 885 ; *Anderson* v. *Vicary*, [1900] 2 Q. B. 287 ; to kill ground game ; but the lessee has full power to institute legal proceedings as if he were the exclusive owner of the sporting rights. The lessee has no right to turn out game bred on other land, see *Birkbeck* v. *Paget*, 31 Beav. 403. A lease of part of the land and of sporting rights over another part, under an express power to let settled land, " or any part or parts thereof," is invalid : *Dayrell* v. *Hoare*, 12 Ad. & El. 356 ; but such a lease granted under the S. L. Act, 1925, s. 41, or by a mortgagor under the L. P. Act, 1925, s. 99, is valid : *Brown* v. *Peto*, [1900] 2 Q. B. 653. As to the construction of a demise of sporting rights generally, see Fawcett, L. & T., 3rd ed., 410 ; Woodfall, 21st ed., 108, 884.

(*d*) See *ante*, p. 918, note (*c*).

(*e*) The right conferred by the words in brackets makes the demise one of an interest in land as distinguished from a mere licence : *Webber* v. *Lee*, 9 Q. B. D. 315 ; *Lowe* v. *Adams*, [1901] 2 Ch. 598. The lessee can take away the fish killed by him without express permission : *Fitzgerald* v. *Firbank*, [1897] 2 Ch. 96.

(*f*) This right does not require express reservation : *Gearns* v. *Baker*, L. R. 10 Ch. 355 ; *Dick* v. *Norton*, 85 L. J. Ch. 623.

mentd, paying therefor yrly durg the sd term hby grted, & so in proportion for any less time than a yr the rent of £——, witht any deduction, by eql qtrly [half-yrly] paymts, &c., *see* p. 784; *Covenants by lessee to pay rent*, p. 788, f. **3**, *omittg the words* "except as afsd;" *to pay rates* (*a*), *taxes & outgoings*, p. 789, f. **4**, "upon the sd rights & privileges hby demised or on the owner or occupier in respt throf;" AND WILL exercise the rights & privileges hby conferred in a sportsmanlike & pper mner; AND will keep down the number of hares & rabbits on the sd premes so as to prevent them from becomg injurious at any time to the woods of the lessor or the crops of his tenants (*b*); AND will from time to time pay to the lessor compenson for any mischief or damage that shl be done at any time by the sd hares & rabbits or by pheasants to the sd woods or crops [AND also will at the expiron or sooner determinon of the sd term leave in or upon the sd premes a breedg stock of game & hares eql to that wch now exists thron]; AND further that the lessee will not at any time durg the sd term assn or underlet the rights & privileges hby grted or any pt throf witht the previous consent in writg of the lessor; AND will at all times durg the sd term employ a sufficient number of keepers & watchers to protect the wood & underwood upon the sd premes, & to preserve the game & fish in & upon the same, & to warn off all psons who durg the sd term shl sport or orwise poach or trespass thron; AND will in all respts effectually preserve the game & the animals, including fish, & prevent poaching & trespass, & prosecute poachers & take legal proceedings against trespassers; AND will not do or in the exercise of the rights or privileges hby demised permit any spoil or damage whatsr to the sd lands & premes or to the fences, hedges,

Lessee's covenants.

To keep down hares and rabbits.

To keep up a stock of game.

Not to assign, &c. (*c*).

To keep off trespassers, &c.

Rating of sporting rights.

(*a*) As to the rating of sporting rights, see Rating Act, 1874, s. 6. Where the owner of land has let the right of sporting over part of the land which he retains in his own occupation, the lessor may be rated in respect of the sporting rights, see *Kenrick* v. *Guilsfield Overseers*, 5 C. P. D. 41.

(*b*) Where, as in this precedent, the exclusive right to kill game is vested in the sporting tenant, he is bound to indemnify the lessor against all claims for compensation under the Agricultural Holdings Act, 1923, s. 11 (4).

(*c*) As to the construction of this covenant, see *Grove* v. *Portal*, [1902] 1 Ch. 727.

plantations & crops thron (*d*); And will make good all damages wch in the exercise of the sd rights or privileges shl be done to the sd lands, fences, hedges, plantation or crops; Provd always, &c., *as in power of re-entry*, p. 817, *down to* "credors," then & in any such case it shl be lawful for the lessor by notice in writg under his hand to determine this psnt demise, & thrupon these psnts & the rights & privileges hby grted shl absolutely cease & become void (but witht prejudice to any right of action or remedy wch shl have accrued to the lessor in respt of any breach of any of the covts & provons hrin contained); *Covenant by lessor for quiet enjoymt*, p. 814, f. **10**, "of the rights & privileges hby demised" (*e*); And the lessor hby covts with the lessee that he will, within fourteen days after receiving notice from a tenant that damage has been done to his crops from game, give informon throf to the lessee or his keeper; [Provd always, &c., that it shl be lawful for the lessor at any time durg the term hby grted to determine the rights & privileges hby demised as to any pt or pts of the sd lands, woods, & premes not exceedg in the whole —— acres, makg compenson for the same by a reduction of the rent hby reserved, the amt of such reduction to be fixed in case of dispute by arbitron under the provon hrinar contained]. *Arbitration clause*, p. 828, f. **17**. In witness, &c.

Power for lessor to determine lease.

As to damage by game (*f*).

Power to lessor to determine rights as to portion of the land.

[*Schdle of lands.*]

(*d*) As to the right of a lessee of sporting rights to protect his property from injury by fire, see *Cope* v. *Sharpe*, [1912] 1 K. B. 496.

(*e*) An express covenant for quiet enjoyment in a demise of sporting rights does not prevent the lessor from turning his property to the best advantage, even if in so doing he injures the shooting: *Dick* v. *Norton*, [85 L. J. Ch. 623.

(*f*) See *ante*, p. 920, note (*b*).

V.

AGREEMENT *for* YEARLY TENANCY *of* KEEPER'S LODGE *and* SPORTING RIGHTS (*a*). *Concise Form.*

Parties. AN AGRMT made the —— day of ——, ——, betn A., of, &c. (hrinar called the landlord), of the one pt, & B., of, &c. (hrinar called the tenant), of the other pt.

Agreement. **1.** THE LANDLORD agrees to let & the tenant agrees to take (subjt as regards the rights & liberties hrinar mentd to the rights of the landlord's tenants of lands not in hand under their respective agrmts or leases or by law): First, The exclusive right of shootg, fishg, & sportg over ALL THOSE lands situate in the Parishes of —— & ——, constitutg or known as the —— Este belongg to the landlord; AND also the right to take away the game & other wild birds & animals & fish killed or taken on the sd lands; TOGR with liberty to rear on the sd lands pheasants & partridges & for that ppose or any ancillary ppose to use & occupy (but as to lands not in hand not witht the consent of the tenant or tenants throf for the time being) such pts of the sd lands not exceedg togr in any one season —— acres as shl be approved in writg by the agent of the landlord; AND to erect on the lands so used & occupied all necy & pper pens, fences, huts, & shelters; AND also the right at all times to enter upon the lands hrinbfe described for all or any of the pposes afsd; AND, Secondly, ALL THAT cottage, situate, &c., known as the keeper's cottage, with the kennels, outbldgs, & garden belongg thereto, from the 2nd day of Feby, 19—, from yr to yr until the tenancy shl be determined by either party givg to the other not less than six calr months' notice in writg (*b*) to determine the same at the end of any yr throf AT the yrly rent of £—— to be pd (except as hrinar mentd) by eql half-yrly paymts on the 2nd day of Augt & 2nd day of Feby in each yr, the first paymt to be made on the —— day of Augt next, & to be a full half-yrly paymt, & the last paymt to be made in advance three calr months bfe the expiron of the tenancy.

(*a*) See notes, *ante*, pp. 946, 947, 948.

(*b*) As to length of notice in the absence of agreement, see *Lowe* v. *Adams*, [1901] 2 Ch. 598.

THE TENANT HBY AGREES

2. TO PAY the rent at the times & in mner afsd.

3. TO PAY all rates (*c*) & taxes except landlord's ppty tax.

4. TO KEEP down the rabbits in the coverts so that they may do no appreciable damage to the trees & saplgs in the coverts or to the crops on the adjoing or neighbourg lands; AND to pay to the landlord compenson for all injury done by rabbits in the coverts or to the crops on the adjoing or neighbourg lands.

5. NOT TO turn out more than —— pheasants; AND to pay compensation for all damage to crops by pheasants [game].

6. TO MAINTAIN in good order the fences of all coverts now fenced.

7. TO PRESERVE effectually, to prevent trespass & poachg. & to prosecute for poachg offences.

8. NOT TO assn or underlet witht the previous consent in writg of the landlord.

9. TO LEAVE at the end of the tenancy a fair breedg stock of game, & in particular not less than —— hen pheasants belongg to —— Woods & not less than —— hen pheasants belongg to the —— Plantation (*d*).

IN WITNESS, &c.

(*c*) See *ante*, p. 948, note (*a*).

(*d*) For another form of this clause, see *ante*, p. 948.

LEASES (MINING) (*a*).

PARCELS.

Unopened mines with surface (*b*).

1. ALL THOSE pieces of land, &c., *described with reference to schdle & plan*, p. 483, & all coal, cannel, ironstone, bldg-stone, & clay, *or*, " & all that mine, bed, or seam of coal called ——, [& all other, if any, the mines, beds, or seams of coal overlaying, *or*, " situate below," the —— seam] & all seams or beds of fire-clay associated & capable of being worked in conjunction with the —— seam, [or with any such other mine or seam of coal as afsd]," *or*, " & all mines, veins, & beds of tin, tin ore, copper, copper ore, lead, lead ore, & other metals, ores, & metallic minls whatsr," situate, lying, & being in or under the sd pieces of land : Togr with full liberty & power for the lessees (*c*), their agents & workmen, &c., *to work mines*, *see* f. **5**, p. 953.

(*a*) As to coal mines, see Coal Mines Act, 1911, which consolidates the previously existing law, especially ss. 19, 21, 26, and for the rules and orders under the Act, see *post*, p. 969, note (*c*) : see also Coal Mines Act, 1914. As to other mines, see the Metalliferous Mines Regulation Act, 1872, especially ss. 12, 13, 14, the Act of 1875, the Slate Mines (Gunpowder) Act, 1882, and for the rules thereunder, see *post*, p. 969, note (*c*). As to mines royal, see 32 Sol. J. 657. As to quarries, see the Quarry (Fencing) Act, 1887, and the Quarries Act, 1894, *ante*, p. 76.

Mineral rights duty.

As to mineral rights duty, see s. 20 of the Fin. (1909–10) Act, 1910. This duty is collected annually, and is to be borne by the immediate lessor notwithstanding any contract to the contrary : s. 20 (4). A release of a right of support is not a mining lease within the Act, although the consideration for the release is measured by the amount of coal gotten from the subjacent minerals : *I. R. Commrs.* v. *Joicey*, [1913] 2 K. B. 580. Brine is a mineral within the Act : see *A.-G.* v. *Salt Union*, [1917] 2 K. B. 488.

(*b*) As to the rights of a lessee to work mines in the absence of a special power, see *Saunders' Case*, 5 Co. Rep. 12a ; *Clegg* v. *Rowland*, L. R. 2 Eq. 160 ; MacSwinney on Mines, 5th ed., 44 *et seq.* See also the Mines (Working Facilities and Support) Acts, 1923 and 1925.

(*c*) As mining leases are commonly taken by two or more lessees, the word " lessees " in the plural is used throughout these forms.

2. FULL & EXCLUSIVE LIBERTY & licence to search for, dig, mine, & work all coal, iron-stone, bldg-stone, & clay, *for variations, see last form*, situate, lying, & being in or under all those pieces of land, &c., & all [coal, &c., & other minerals] there found to get, raise, convert, [make merchantable & fit for sale] & carry away for their own use. Power to work mines (*d*).

3. ALL THOSE pieces of land situate, &c., & all the bldgs & erections thron, & the pits & shafts now open thron, & known as the —— Colliery, & the engines, boilers, & other fixed machinery, fixtures, & works, in, upon, under, or about the same: AND ALSO all coal, ironstone, bldg-stone, & clay, *or as the case may be*, within or under the same pieces of land, [*or* "within or under all those pieces of land, situate, &c."]; AND ALSO all rlys, tramways, roads, way-leaves, easemts, & conveniences belongg to or used in connection with the sd colliery & works. Opened collieries, &c., with part of surface.

4. ALL THOSE slate rocks, slate quarries, & beds of slate of whatsr description & quality, wch now are or at any time or times hrafter durg the term hby grted, shl or may be opened (*e*) & discovered in, upon, or under the pieces of land, &c.: AND ALSO all tramways, inclines, & other roads, levels, drifts, & works now existg upon or under the sd lands hrinbfe described [& upon or under the lands, &c., *being lands not comprised in the demise*], & used or intended for gettg, raisg, or transportg the slate from the lands & hds hrinbfe described, or for pposes connected therewith, & all trams, plates, & fixtures in or about the same. Slate quarries.

5. AND ALSO liberty & power for the lessees, their agents & workmen, [to enter upon the lands afsd, &] to search for, win, work, get, raise, convert, [make merchantable & fit for sale] & carry away the [coal & other] produce of the mines & premes hby demised, but witht enterg upon [or letting down] the surface of any of the sd lands except the lands coloured —— on the sd plan, [& witht disturbg or damagg any existg bldgs [or any bldgs hrafter to be erected for agricultural pposes or Liberty to work mines (*f*)

(*d*) As regards coal below low water-mark, see *Lord Advocate* v. *Wemyss*, [1900] A. C. 48.

(*e*) As to open mines, see *Greville-Nugent* v. *Mackenzie*, [1900] A. C. 83; *Chaytor* v. *Trotter*, 87 L. T. 33; *Re Morgan*, [1914] 1 Ch. 910.

(*f*) See another form, *ante*, p. 485; as to letting down the surface, see *post*, p. 956, note (*b*).

with the consent of the lessees (*a*)] on the sd lands coloured ——, & witht interferg with any rly, tramway, road, works, or privileges of any other lessees of coal, stone, or other mines or minerals, belongg to the lessor].

Liberty to sink pits and make works (*b*).

6. And also liberty & power for the pposes afsd & all other pposes connected with the due & proper managemt, workg, & developmt of the sd mines & premes, to use & maintain the existg pits, shafts, rlys, tramways, roads, colliery bldgs, machinery, & works, on or under the sd lands, & to deepen existg pits & to sink such pits & shafts, to drive such planes, levels, adits, sumps, waterways, & airways, to erect, construct, & maintain such engines, machinery, dressg floors, bldgs, workshops, store-houses, cottages, [coke ovens, iron furnaces, brick-kilns, lime-kilns], erections & things, & to form all such rlys, tramways, & other roads & communicons, spoil heaps, & other conveniences, in, over, & under the sd lands as may be necy or convenient. [Provd always that such liberty or power shl only be exercised with the approval of the lessor, such approval not to be unreasonably withheld.]

Liberty to quarry.

7. And also liberty & power to quarry & get stone, sand, gravel, & other bldg & road materials from some convenient pt or pts of the sd lands [to be selected from time to time by the lessor], & to use & employ the same for the pposes of the mines hby demised, & the works belongg thereto, [but not for sale, nor for the erection of dwelling-houses on the sd lands, nor for the erection of bldgs of any kind on any other lands, nor for any ppose whatsr connected with other lands or the mines thrunder], witht paymt of any rent or royalty for the same.

Liberty to dispose of building-stone, gravel, &c.

8. And also liberty & power to carry away & convert to their own use all bldg & other stone, gravel, sand, & road material, wch may be got in the course of workg the sd mines witht paymt of any rent or royalty for the same.

Liberty to get clay and make bricks (*c*).

9. And also liberty & power to get common brick clay, sand, & other substances to be used in the manufacture of bricks on any pt of the sd lands [to be selected by the lessor], & to manufacture the same into bricks [at any such place as

(*a*) If the covenant extends to future buildings these restrictive words may sometimes be necessary to prevent unfairness to the lessees.

(*b*) See *Re Masters & G. W. Rly. Co.*, [1901] 2 K. B. 84, and MacSwinney, 5th ed., 131.

(*c*) For another form, see lease of a brickfield, see *post*, p. 997.

last afsd], & to use such bricks for the pposes of the mines hby demised, & the works belongg thereto, witht paying any royalty for such as shl be used [for the pposes of the sd mines, or] for erectg, makg, or repairg any bldg, workshop, kiln, clamp, furnace, oven, or other erection or work hby [demised or] authorised to be erected or made on the sd lands, [but paying a royalty of —— shillings per thousand for all bricks wch shl be taken away from the same lands].

10. And also liberty & power (so far as the lessor can grt the same) to use & enjoy for any of the works or operons afsd, any streams, watercourses, springs, or water, in or upon the sd lands, & to divert, stop or dam up any such stream or watercourse, & to make, construct, & maintain any watercourses, culverts, drains, or reservoirs, for any of the pposes afsd, [but not so as to deprive any house of a pper supply of water, or in any way to foul or pollute the water, or to interfere with the rights of any other lessees of mines or minerals belongg to the lessor or of any other psons entitled to the use of such water]. *See Prec. I., clause* **4**, p. 983. Liberty to use water.

11. And also liberty & power for the workg of the sd mines, to use & divert all waters & watercourses within the sd lands provd that such diversion of any watercourse can be made witht prejudice to any psons (other than the lessor) entitled to the use throf & to make any reservoirs or any watercourses or leats for conveying the same or any other streams of water in, over, or through the sd lands for the pposes afsd. The same. Another form.

12. And also liberty & power to open a level upon the adjoing lands of the lessor [as shown on the sd plan & thron distinguished by the colour ——, & the words "proposed level:"] And to form a rly or tramway across the same lands from the sd level to join any line of rly or tramway now existg, or wch may hrafter be made: And also to deposit spoil on the same lands [at the place distinguished on the sd plan by the colour ——, & the words "proposed spoil bank:"] [Provd that the situation of the sd level, rly, tramway, & spoil bank shl be selected by the lessor or his agent]. Liberty to make a level and railway over, and deposit spoil on adjoining lands (*d*).

13. And also liberty & power for the lessees, their agents & workmen, to work & get the [coal] & other minerals from any

(*d*) As to the ownership of spoil bank, see *Boileau* v. *Heath*, [1898] 2 Ch. 301.

Liberty to work adjoining mines through demised mines, or out-stroke.

adjoing mines now or at any time or times hrafter durg the term hby created, belongg or in lease to the lessees, & to bring the same through the mines hby demised, & the levels & workgs throf, & for that ppose to make drifts & passages by way of outstroke into such adjoing mines [& also to deposit the spoil of such adjoing mines on the lands hby authorised to be used for spoil heaps of the mines hby demised] (*a*).

14. And also liberty & power for the lessees to make drifts & passages through the barriers or limits of the sd demised mines & premes for the ppose of workg & gettg the [coal] & other minerals therefrom by way of instroke through any adjoing mines now or hrafter durg the term hby created belongg or in lease to the lessees.

Liberty to work demised mines through adjoining mines, or instroke (*a*).

15. And also liberty & power to make such roads, tram-roads, & rlys in, through & over the demised premes to & from the —— Rly as may be necy, & to go & repass over the same, with or witht waggons, horses, or locomotive engines, for the ppose of carrying coal & other minerals from, & bringg materials to the demised premes.

Liberty to make specified roads.

Liberty to let down surface (*b*).

16. And also liberty & full power in exercisg the liberties & powers afsd to let down the surface of the sd parcels of land witht being liable for damages occasioned thereby.

"In-stroke." "Out-stroke."

(*a*) Liberty to work the demised mine by coming in through an adjacent mine is called "instroke"; liberty to work another mine by going out from the demised mine is called "outstroke." If there be three adjacent mines A. B. and C. communicating with each other, having the pit's mouth in A., belonging to different owners but leased to the same lessee, in the lease of A. he will require liberty to work B. and C. by outstroke from A., in the lease of B. he will require liberty to work B. by instroke from A. and to work C. by outstroke from B., and in the lease of C. to work by instroke from A. and B.; see also Prec. I., clauses **8** and **36**, *post*, pp. 984, 987. In the absence of express stipulation the lessee may work by instroke: see *Lewis* v. *Fothergill*, L. R. 5 Ch. 103; *Jegon* v. *Vivian*, L. R. 6 Ch. 742; *Whalley* v. *Ramage*, 10 W. R. 315; but apparently he is not *primâ facie* entitled to work by outstroke, see MacSwinney, 5th ed., 131, 132.

(*b*) The lessee has no right to let down the surface in the absence of permission either expressly conferred or necessarily implied: *Butterley Co.* v. *New Hucknall Colliery*, [1910] A. C. 381; *Jones* v. *Consol. Anthracite Collieries*, [1915] 1 K. B. 123; *Welldon* v. *Butterley Co.*, [1920] 1 Ch. 130; but see *Consett, etc., Society* v. *Consett Iron Co.*, [1922] 2 Ch, 135; and see *ante*, p. 350, note (*a*). As to working minerals under railways and compensation for leaving the same unworked, see the Railway Clauses Consolidation Act, 1845, ss. 78—85, and first, second, and third schedules thereto, as amended by the Mines (Working Facilities and Support) Act, 1923, ss. 15—78 and 78A. This clause is not a usual one in Derbyshire: see *Markham* v. *Paget*, [1908] 1 Ch. at p. 710.

17. PROVD ALWAYS that the sites for all spoil-banks, bldgs, workshops [quarries, clay-pits, sand-pits, chalk-pits, brick-kilns, lime-kilns, coke-ovens, iron furnaces, dressg-floors, ventilatg-shafts, railroads, tram-roads, & other communicons], & for all surface operations of the lessees shl be in every case selected by the lessor or his agent. Proviso as to sites of surface operations.

18. PROVD ALWAYS that in the exercise of the afsd liberties & powers the lessees shl not obstruct or retard the gettg, workg, or developmt of the minerals hrinar excepted & reserved to the lessor, or of the minerals in, under, or upon any other lands belongg to the lessor. Lessees not to obstruct lessor's mining operations.

19. PROVD ALWAYS that the lessees shl, in the exercise of the powers & authorities hby grted, do as little injury or damage as can be to the lands afsd, or the timber, crops, or bldgs thron, or to the tenants or occupiers throf, & conform to the provons & restrictions hrinar contained. Lessees not to do unnecessary damage.

EXCEPTIONS AND RESERVATIONS (*c*).

1. EXCEPT & RESERVG unto the lessor so much & such pts of the coal in the mines or veins hby demised as is or may be required for the support of any house or bldg now existg on the sd land [or wch may hrafter be erected thron for agricultural pposes or with the consent of the lessees (*d*)] : AND ALSO all the coal within a distance of —— yards from each of the existg pits, & any new pit wch may hrafter be sunk to the sd mines or veins hby demised, wch last-mentd coal shl be left as a bulwark or support : AND ALSO all the coal within a distance of —— yards from the boundary of the lands hby demised, wch is to be left as a barrier, & wholly undisturbed by mining operations : [AND ALSO such of the coal in the mines or veins hby demised as the lessor shl remove in sinkg to, or workg the deeper mines or veins hby reserved, or wch he shl require to be left as a bulwark or support for any existg pit, or any new pit wch may hrafter be sunk to the sd deeper mines or veins]. Exception of coal for support and barriers, &c.

(*c*) See other forms of reservations *ante*, p. 942.

(*d*) See *ante*, p. 954, note (*a*).

General reservation of excepted minerals.

2. EXCEPT & RESERVG unto the lessor all mines & minerals in & under the sd lands other than the mines & minerals hrinbfe expressly demised: WITH LIBERTY & POWER for the lessor & psons authorised by him in that behalf, to search for, work, get, raise, convert, manufacture, & carry away the sd excepted or reserved mines & minerals at his or their will & pleasure: AND WITH LIBERTY & POWER for the pposes afsd to sink, drive, erect, make & use all such pits, shafts, adits, waterways, air-ways, bldgs, pumps, rlys, tramways, roads, engines, machinery, spoil-banks, cinder-banks, & other conveniences, upon, through, or under the sd lands as shl be necy, or convenient, *where water rights are of primary importance, omit the word* " water-ways," *& add* " & to use any springs, streams, water-courses or waters, now or hrafter existg on or under any pt of the demised lands, & to divert the same into any other pt of the sd lands by drifts, or any other means," *& see Prec. I., clause* **10**, p. 984.

Reservation of stone, gravel, &c.

3. AND ALSO except & reservg unto the lessor all such stone, sand, gravel, & other bldg or road materials as he may require for use on his este, with full power to enter upon the sd lands, & to dig, search for, work, quarry, & carry away the same.

Timber felled to belong to lessor.

4. PROVD ALWAYS that all the timber & other trees wch shl be felled in the exercise of the liberties & powers hrinbfe given to the lessees shl belong to the lessor.

Power to lessor to use tramways, &c.

5. WITH LIBERTY & power for the lessor for the pposes afsd to use all rlys, tramways, & roads for the time being belongg to the lessees or used by them for workg the mines & minerals hby demised, or the other pposes afsd, & to cross, intersect, & join any such rlys, tramways, & roads with or to other rlys, tramways, or roads, to be made under the liberty hby reserved to the lessor, & to extend or continue any such rlys, tramways, or roads as afsd, through the spoil-banks, yards, & other premes belongg to, or occupied by the lessees in connection with the mines hby demised.

Lessor to join in repairing tramways.

6. PROVD ALWAYS that if the lessor or any psons authorised by him as afsd, shl use any rly, tramway, or road in common with the lessees, under the reservon hrinbfe contd, the lessor shl pay & contribute a just proportion of the expse of keepg the same in repair & workg order, the amt of such proportion to be settled in case of dispute by arbitron.

7. With liberty & power for the lessor & his agents, with or witht engineers, surveyors, or other psons at all reasble times durg the term hby grted to enter upon, inspect, & examine the sd demised mines & premes, & every pt throf, for the ppose of ascertaing the condon throf, & the mner of workg, carrying on, & managg the same, & the quantity of [coal, or other] minerals actually got, or for any other reasble ppose, & to take plans & measuremts of the workgs in the sd mines, & for the pposes afsd, to use, free of charge, all the shafts, pits, engines, ropes, tackle, machinery, rlys, tramways, roads, works, & things now or hrafter existg on the sd demised premes, & to have all necy & reasble assistance of the miners, workmen, & others in the employmt of the lessees.

Liberty to enter and inspect mines (*a*).

8. Provd always that the liberties & powers hrinbfe reserved to the lessor shl be exercised & used, so as to cause as little obstruction & hindrance as possible to the lessees in the enjoymt of the powers & privileges hby grted, & that the lessor shl pay to the lessees reasble compenson for all loss or damage wch they may sustain, by reason or in consequence of such exercise or use, the amt throf to be settled in case of diffce by arbitron.

Proviso that lessor shall not obstruct lessees, and shall make compensation.

REDDENDUM (*b*).

1. Paying thrfor [unto the lessor] yrly durg the sd term hby grted, & so in proportion for any time less than a yr, a fixed or yrly rent of £——, payable half-yrly on the —— day of ——, & the —— day of ——, the first paymt throf to be made on the —— day of —— [in respt of wch rent the lessees may work & get durg the half-yr for wch each such half-yrly paymt is made so much —— as at the rates hrinar mentd wd produce a galeage [footage] rent of £——].

Fixed or dead rent (*c*).

2. And also a yrly surface-rent of £—— for every acre, & so in proportion for any less quantity than an acre of the sd lands wch shl be taken or used by the lessees, for any of the

Surface rent.

(*a*) Compare the covenant as to this, *post*, p. 975.

(*b*) See *ante*, p. 874, note (*i*), and p. 785, note (*d*).

(*c*) A varying minimum rent may be reserved where the lease is granted under the S. L. Act, 1925, see s. 45. and *cf*, *Re Aldam's S. E.*, [1902] 2 Ch. 46.

works, operations, or other pposes afsd, every such surface-rent to be payable by eql half-yrly paymts on the half-yrly days afsd in every yr after the same shl become payable, & the first of such paymts to be made on such one of the same half-yrly days as shl happen next after the same shl have become payable.

Royalty galeage-rent.

3. And also a galeage-rent or royalty, to be pd on the days hrinbfe mentd, of —— for every customary ton (reckong —— lbs. to the ton) of —— got or raised from or out of the sd demised —— & premes [in excess of —— tons (*a*)], durg the half-yr immedly precedg each such paymt.

Different royalties for different seams.

4. And also the galeage-rents or royalties followg to be pd on the days afsd, namely a galeage-rent or royalty of —— for every ton (reckong 2240 lbs. to the ton), of coal got or raised from or out of the —— seam, & a galeage-rent or royalty of —— for every ton of 2240 lbs. got or raised from or out of the —— seam durg the half-yr immedly precedg each such paymt.

Different royalties for large and small coal.

5. And also the galeage-rents or royalties followg to be pd on the days afsd (namely):—A galeage-rent or royalty of —— for every —— lbs. of coal got or raised from or out of the demised premes, except small coal wch will pass through a screen with meshes —— inches square, *or*, " the bars of wch are [one] inch apart ; " And a galeage-rent or royalty of —— for every —— lbs. of such small coal as afsd ; And a further galeage-rent or royalty of —— for every —— lbs. of coal, not being small coal, impperly sold, used, or consumed under the denomination of small coal, such last-mentd galeage-rent or royalty to be in addon to the galeage-rent or royalty first hrinbfe mentd.

Royalties varying according to market price.

6. And also the royalties followg, to be pd on the days afsd, namely, At all times durg the sd term a royalty of —— for every —— lbs. of coal got or raised from or out of the demised premes ; And also if & whenever the price of coal at the pit's mouth shl exceed the price of —— shillgs per ton, then an addonal royalty of —— pence for every —— lbs. of coal so got or raised for every shillg or fraction of a shillg by wch such price shl exceed —— shillgs per ton.

(*a*) That is, the quantity of tons the royalties on which will amount to the fixed rent.

7. And also a rent of £—— payable half-yrly on the days afsd for every acre being one foot in thickness, & so in proportion for any less quantity than an acre, & for any greater or less thickness than a foot, of all coal wch shall have been raised or got out of the —— seam in the half-yr immedly precedg each such paymt. Footage rent.

8. And also a way-leave rent of —— for every customary ton (reckong 2240 lbs. to the ton) of —— & other minerals raised or obtained from any lands not comprised in this psnt lease, *or,* "the adjoing mines known as —— & —— as the same are now held by the lessees," & brought through, over, or upon the mines & premes hby demised, & the workgs throf under the liberty hrinbfe grted in that behalf, such way-leave rent to be payable half-yrly on the days afsd for & in respt of all —— & other minerals wch may be brought through, over, or upon the mines & premes hby demised, or the workgs throf, as afsd, during the half-yr immedly precedg each such paymt. Way-leave rent (*b*).

9. And also a rent of £——, in addon to the sd way-leave rent for every customary ton (reckong as afsd) of spoil or rubbish produced in workg —— & other minerals raised or obtained from any lands not comprised in this psnt lease, *or as in last form,* & deposited on the lands comprised in this psnt lease under the liberty hrinbfe grted, such last-mentd rent to be payable half-yrly on the days afsd for or in respt of all spoil or rubbish deposited as afsd durg the half-yr immedly precedg each such paymt. Spoil bank rent.

10. Provd always that if the spoil or rubbish produced in workg —— & other minerals from —— be deposited on the lands hby demised under the liberty hrinbfe grted, a rent of —— for every customary ton (reckong as afsd) of all —— & other minerals worked as last afsd, shl be pd in addon to the sd way-leave rent, such rent to be payable half-yrly on the days afsd for or in respt of all —— & other minerals worked as afsd durg the half-yr immedly precedg each such paymt. The same. Another form.

11. Renderg & deliverg on the sd premes durg the sd term unto the lessor for his own use one eql —— pt of all Render in kind or money at

(*b*) See *Morgan* v. *Davey*, 1 Cab. & El. 114. Mineral rights duty is leviable in respect of a way-leave: see Fin. (1909–10) Act, 1910, ss. 20 (1), 24; and *Shawe Storey* v. *I. R. Commrs.*, [1914] 1 K. B. 87.

lessor's option in respect of metallic minerals.

[copper, copper ore, lead, lead ore, tin, tin ore, & all other metals, ores, & metallic minerals] raised or got durg the sd term from the sd lands & premes by virtue of these psnts after the same shl have been dressed, made merchantable, [& fit for smeltg & refing], clear of all expses attendg the raisg, gettg, makg merchantable, & weighg the same [*or* at the option of the lessor, PAYING in lieu of the sd reserved pts of the sd [ores, metals, or minls,] one eql —— pt of all moy arisg from the sale of all such [ores, metals, & minerals,] as afsd, after deductg cost of carriage to the place of sale, such cost not to exceed —— per ton of —— lbs. [for copper & copper ore, —— per ton for lead & lead ore, & —— per ton for tin & tin ore, &c.] but witht any other deduction, the respective royalties reserved in moy as last afsd to become due & payable as soon as the price of the said [ores, metals, or minerals,] in respt whrof the same shl be payable, shl be reced by the lessees, but in case the same shl not be reced by them within —— calr months from the sale, then at the expiron of such —— calr months] the sd respective pts [or royalties hrinbfe reserved] to be rendered [& delivered] half-yrly on the —— day of ——, & the —— day of —— in every yr durg the sd term or oftener, if & so often as any such [ores, metals, & minerals,] as afsd shl have been raised or got & made merchantable.

Proviso as to coal which may be got without paying royalties, &c.

12. PROVD ALWAYS that the lessees may, in every half-yr of the sd term get & raise out of the sd demised mines & premes, witht paying any royalty, *or*, "galeage," *or*, "footage rent" [so much coal as at the afsd royalty, *or*, "galeage," *or*, "footage rent," wd yield a rent of £—— for such half-yr, & also] so much coal as may be actually consumed in the engines or furnaces for the time being employed or orwise consumed in workg the same mines & premes, or supplied witht charge to the manager, colliers, or labourers employed thron, *when other mines are worked by instroke through the demised mines, say*, "engines or furnaces for the time being exclusively employed or orwise consumed exclusively in the workg of the demised mines & premes," *& add*, "But if any such engine or furnace shl be employed, or if the sd coal shl be consumed ptly in the workg of the demised mines & premes, & ptly in the workg of other mines, such a proportionate quantity only of such coal as shl be consumed in respt of coal raised from the demised

mines shl be free from royalty, *or*, 'galeage,' *or*, 'footage rent.'" *And see Prec. I., clause* **16**, p. 985.

Proviso as to manner of ascertaining footage rents.

13. PROVD ALWAYS that for the ppose of ascertaing the amt of footage rents payable under the reservon hrinbfe contd, coal wch shl be left for pillars, supports, barriers, or bulwarks [or wch shl be found unworkable], shl not be taken into account, & that the acreage shl be measured along the inclination of the seams of coal, & that the thickness shl be measured perpendicular thereto, so as to obtain the true contents of the coal raised or got.

Proviso as to surface rent and compensation to tenants.

14. PROVD ALWAYS that the surface rent payable as afsd shl be in addon to & not in lieu of any compenson wch may be required by & shl be reasbly due to any tenant of the lands in respt of wch the same surface rent shl be payable for any damage or loss occasd to such tenant by the takg or using such lands by the lessees.

Proviso as to accidents.

15. PROVD ALWAYS that if at any time durg the sd term the lessees shl be wholly prevented from workg the mines hby demised by fire or water, [arisg from unavoidable accident,] & if & so long as in such case they shl use their best endeavours to restore the sd mines to a condon fit for workg, & to resume & continue the pper workg throf, the sd yrly fixed or minimum rent of £—— shl cease to be payable durg such time as such impediment to the workg of the sd mines shl continue.

Strike clause.

16. PROVD ALWAYS that if at any time durg the sd term it shl become impossible, owing to any strike (*a*) or combinon of workmen, or owing to any lock-out of workmen, made with the approval of a majority for the time being of the members of the —— [Coalowners' Association], to raise or get a sufft quantity of [coal] from the sd premes to continue the pper workg of the mines hby demised, then & in such case & so long as such impossibility shl continue, such pt only of the sd fixed or dead rent of £—— shl be payable as wd be payable as a galeage [footage] rent, after the rate afsd, in respt of the [coal] actually raised or got out of the premes [other than coal consumed in the engines or furnaces for the time being thron or supplied witht charge as afsd].

(*a*) As to strikes, see *ante*, p. 4, note (*b*).

Average clause (*a*).

17. PROVD ALWAYS that, if in any yr of the sd term the lessees shl not get & raise from the sd demised mines & premes such a quantity of [coal] as at the rates afsd wd produce for that yr galeage [footage] rents or royalties equivalent to the fixed or minimum rent payable for that yr, *or*, "—— tons of ——," then & in every such case the lessees may, in the next succeedg yr, [one or more of the next —— succeedg yrs] of the sd term, but not afterwards (*b*), get & raise from & out of the sd mines & premes such a quantity of [coal] as shl be required to make up the deficiency in such previous yr witht paying any rent or royalty for the same other than the sd fixed or minimum rent.

LESSEES' COVENANTS.

To pay rents (*c*).

1. THAT THE lessees will durg the sd term pay, render, or deliver the sevl rents, royalties, dues, & reservons hrinbfe reserved or made payable on or at the days or times, & in the mner hrinbfe appted for the paymt, render or delivery throf resply, clear of all deductions whatsr (except landlord's ppty tax).

To pay rates, taxes, and out-goings.

2. AND WILL, *as in* f. **4**, p. 789, imposed upon or in respt of [the sd demised mines & premes or (*d*)] the coal, ores, metals, or minerals got therefrom, or the proceeds of the sale throf, or the rents, royalties, or reservons hby reserved or made payable [or any land entered upon, or bldg, erection, or work erected or made under or by virtue of these psnts], or on the owners or occupiers in respt throf, the landlord's ppty tax, & mineral rights duty (*e*) only excepted.

To pay compensation to tenants for surface damage (*f*).

3. AND IF the lessees shl at any time or times durg the sd term occupy or use any of the lands afsd for the ppose of the sd mines or works under the liberty in that behalf

(*a*) As to the importance of this clause, see *Bishop* v. *Goodwin*, 14 M. & W. 260; see also *Clayton* v. *Penson*, [1878] W. N. 158.

(*b*) In some districts this is not restricted to a limited number of years.

(*c*) See *Darley* v. *Tennant*, 53 L. T. 257.

(*d*) Where a licence only to get minerals is granted, omit the words here bracketed, and substitute the words "by virtue of the licences hrinbfe contd" for the word "therefrom."

(*e*) See Fin. (1909–10) Act, 1910, ss. 20 (4), 21 (2).

(*f*) A covenant of this kind, if entered into separately with the owners and occupiers of the surface lands, is enforceable by them: *Dyson* v. *Forster*, [1909] A. C. 98. See L. P. Act, 1925, s. 56, discussed, *ante*, pp. 3, 438, 710.

hby grted, or shl, in the exercise of any liberty or privilege hby grted, injure or damage any of the lands afsd, or any bldgs, erections, or crops thron, or the preparons for such crops, then & and in every such case the lessees will pay to the tenants & occupiers of the lands so occupied, used, or injured as afsd pper compenson for or in respt of such occupon, use, or injury, such compenson to be determined in case of difference by arbitron, & will indemnify the lessor from all actions, proceedings, claims, & demands on the pt of such tenants or occupiers or any other psons in respt of such occupon, use, or injury.

To pay lessor for land permanently injured.

4. And will in addon to the compenson payable to the tenants or occupiers of the lands so occupied, used or injured as afsd, pay to the lessor at the expiron or sooner determinon of the sd term, compenson for all permanent damage done to such lands.

To give lessor notice before entering on land.

5. And will not at any time durg the sd term enter upon any of the lands afsd for the ppose of commencg any new openings or other works, or fellg any timber or trees, or any other ppose, witht givg to the lessor or his agent one week's previous notice in writg, specifying the land so intended to be entered upon & the object of enterg upon the same.

To work mines effectually (*g*).

6. And will at all times durg the sd term unless prevented by [fire or water arisg from] unavoidable accident [or by strikes or combinons of workmen or owing to any lock-out of workmen made with the approval of the majority for the time being of the members of the —— [Coalowners' Association]] effectually & vigorously work, develop, & carry on the sd mines, & will at all times, unless prevented as afsd, keep a sufft number of [at least ——] able miners constantly employed for such ppose.

The same. Another form.

7. And will throughout the sd term in the best & most effectual mner that can be devised & with a sufft number of able workg miners & labourers & witht intermission, except when prevented by unavoidable accident or impediment or durg the execution of repairs [or by strikes, &c., *as in last form*], explore, search for, drain, & work the sd mines & minerals hby demised, And for such pposes will make, erect, & maintain in a pper

(*g*) See *Wheatley* v. *Westminster Brymbo Coal, &c., Co.*, L. R. 9 Eq. 538; *Charlesworth* v. *Watson*, [1906] A. C. 14; and cf. *post*, p. 967, note (*c*).

course of workg & state of repair, sufft shafts, adits, levels, outlets (*a*), bldgs, engines, machy, & apparatus, AND will drive in a pper & workmanlike mner all levels of every description, within the limits afsd, on the course of the seams [lodes] in or under the sd lands, & orwise carry out & exercise the liberties & powers hby grted accordg to the best & most approved modes & course of workg, AND will pperly & sufftly & in due course of mining operons work all (*b*) seams [lodes] wch now are or hrafter durg the continuce of this lease may be discovered within the lands afsd, & wch can be worked so as to remunerate the outlay thron, & for the ppose of ascertaing what seams [lodes] can be worked with a remunerative result will give to every seam [lode] wch promises such a result a pper & sufft trial when in the regular course of workg the same can be reached, AND will at all times actively prosecute & carry on the workgs upon each seam [lode] wch shl have been begun to be worked (except such as shl upon trial have been found incapable of being worked with a remunerative result) until the same shl be wrought & driven through to the extent of the ground comprised within the limits afsd, AND, in case of any dispute or difference arisg as to the propriety or sufficiency of the trial of any seam [lode] or the probability of workg the same with a remunerative result or the sufficiency of the number of men employed upon any seam [lode] or work or the sufficiency or efficiency in other respts of the workg or in anywise in relation thereto, the matter in difference shl be referred to arbitron.

Not to discontinue working.

8. AND WILL not at any time durg the sd term, unless prevented, &c., *as in* f. **6** *or* **7**, discontinue the effectual workg of the sd mines or any of them for the space of —— weeks in the whole in any one yr or for any consecutive period exceedg —— weeks.

To get enough coal to produce minimum rent.

9. AND WILL durg each half-yr endg on the —— day of —— & —— day of —— of the sd term or until the whole of the sd seam of coal [mines & minerals hby demised] shl have been worked out [unless prevented, &c., *as in* f. **6** *or* **7**] get such a quantity of [coal] from the sd mines, as, accordg to the galeage [footage] rent or royalty hrinbfe

(*a*) As to coal mines, see Coal Mines Act, 1911.

(*b*) See *Eckersley* v. *Wigan Coal, &c., Co.*, 54 Sol. J. 48.

reserved, will produce a clear half-yrly rent of £——, *the minimum rent.*

10. And further (& so that this covt shl not be deemed in any way to restrict or limit the general covts hrinbfe contd resptg the workg of the sd mines) will forthwith commence & carry on the followg works & operations with the object of efficiently & vigorously explorg & workg the —— seam [lode] (that is to say):—the —— level [adit] shl be driven eastward at the rate of —— fathoms at the least in every yr by —— able miners at the least, or such greater number as may be requisite, until the same shl be wrought or driven through the ground comprised in the limits afsd, & that such other drivages & works in addon to those hrinbfe specially mentd, shl be from time to time carried on as shl be necy or pper for efficiently developg & workg the —— seam [lode]. *And see Prec. I., clause* **28**, p. 1064. To carry on special works.

11. And will at all times durg the sd term search for, win, work, & develop the mines [seams of coal], & premes hby demised in a pper, skilful, & effectual mner, & accordg to the best & most approved practice of searchg for, winng, workg, & developg similar mines & minls [whether the same be] adopted or in use in the district [or not] [& in compliance with the provons of the Coal Mines Act, 1911], & with as little damage as possible to the surface of the sd lands, & to the messes & bldgs, & other erections, & the timber & crops thron [& also with as little damage & interference as possible to & with the workg of the other mines & minerals [seams of coal] lying & being under the lands afsd, but not comprised in this demise], & so as to work & raise the largest possible quantity of [coal] witht causg any damage or injury to the mines [seams of coal] hby demised. To work mines properly (*c*).

12. And will not at any time commit or suffer within the mines & premes hby demised [or in any other mines connected or worked therewith] any wilful or negligent act Not to injure mines (*d*).

(*c*) See *Davis* v. *Treharne*, 6 App. Cas. 460; *Charlesworth* v. *Watson*, [1906] A. C. 14; *Brewer* v. *Rhymney Iron Co.*, [1910] 1 Ch. 766; *Consett, etc., Society* v. *Consett Iron Co.*, [1922] 2 Ch. 135. A covenant to work properly is not a covenant to work continuously: *Jegon* v. *Vivian*, L. R. 6 Ch. at p. 757; *Lord Abinger* v. *Ashton*, L. R. 17 Eq. at p. 370.

(*d*) As to the importance of this covenant, see *Payne* v. *Rocher Colliery Co.*, [1887] W. N. 37.

whereby the mines hby demised [or any other mines or minerals lying & being under the lands afsd, but not comprised in this demise], may be damaged by or overcharged with water or foul air, or whereby the workg of any such mines or minerals may be impeded or prevented, [or wch may occasion or bring any creep, crush, or thrust upon the levels, air-courses, water-courses, or works of the sd mines, or any pt throf].

To protect mines from encroachment.

13. And will at all times employ all reasble care & diligence to protect the mines & minerals hby demised [& all other mines & minerals, *or* "seams of coal," lying & being under the lands afsd, but not comprised in this demise] from being injured, encroached or trespassed upon, or surreptitiously worked, & in the event of any such injury, encroachmt, trespass, or surreptitious workg, will take such measuremts as will show the extent of the same & enable the lessor to recover compenson for any loss occasd thereby.

To keep works in repair, and deliver up at end of term (*a*).

14. And will at all times durg the sd term keep in good & pper repair, order, & condon all the levels, adits, drifts, shafts, pillars, bulwarks, pits, engines, machinery, pumps, water-courses, air-courses, bldgs, sheds, workshops, erections, rlys, tramways, roads, & other works & conveniences belongg to the said mines hby demised or used in connection therewith, except any works or things wch may become unnecy for the further workg of the sd mines [& wch may not be necy or useful for the workg of other mines & minerals lying & being under the lands afsd, but not comprised in this demise], & the same, in such good & pper repair, order, & condon, will deliver up to the lessor, at the end or sooner determinon of the said term [or at the time when the same shal become unnecy for the workg of the sd mines hby demised].

That the lessor may repair on default of lessees.

15. And that if the lessor, or his agent, shl at any time durg the sd term give or leave on the sd demised premes a notice in writg to the lessees, to execute or do any such repairs or works as ought to be executed or done by virtue of the covts hrinbfe contd, & the lessees shl neglect or omit to execute & do the same within the period of three calr months from the date of such notice, the lessor shl be at liberty to enter upon the

(*a*) See also *post*, p. 976, l. 50. As to a covenant to deliver up fixed machinery, see *Re British Red Ash Collieries*, [1920] 1 Ch. 326, and *ante*, p. 795.

mines & works hby demised, & to execute & do the necy repairs & works, & the lessees shl repay the expses of such repairs to the lessor, on demand, & in default of paymt the amt so expended shl be recoverable by distress (*b*) or orwise, in like mner as if the same had formed pt of the rents hby reserved.

16. And will at all times durg the sd term, at their own expse, make & maintain sufft fences for the protection of man & beast round every pit shaft & open pt of any adit or other work already sunk or dug, or wch hrafter shl be sunk or dug, within the limits afsd. To fence pits (*c*).

17. And will, from time to time, & at all times durg the term hby grted, pperly & securely fence off, & keep fenced off from the adjoing lands by means of a substantial stone wall [post & rail fence] at least —— feet in height, or some other sufft fence, all the pits, shafts, rlys, tramways, & works of the lessees, used in connection with the mines hby demised: [And whenever any such rlys or tramways shl be made through existg hedges, banks, walls, or fences, will make & maintain pper gates across the rly or tramway at such opengs: And will at the expiron, or sooner determinon of the sd term, at the option of the lessor, either leave such gates in good repair & condon, or block up the opengs so made with a pper hedge, bank, wall, or fence so as to correspond with the adjoing hedge, bank, wall, or fence (*e*).] To fence pits and railways, &c. (*d*).

18. And will, whenever any pit or shaft shl become unnecy or useless, either fill up the same with earth or rubbish, or surround the same with a good & substantial wall of —— inch brickwork or masonry, at least six feet in height, or cover To fill in or fence useless shafts (*d*).

(*b*) See *ante*, p. 821, note (*c*).

(*c*) As to the various Acts, see *ante*, p. 1030, note (*a*), and as to the rules and orders under the Acts, see the Coal Mines Act, 1911, ss. 86 and 87, and the Third Schedule thereto; and see as to explosives in coal mines the Explosives in Coal Mines Order, the 21st May, 1912, S. R. & O. (1912), p. 512. As to notice of accidents under the Coal Mines Act, 1911, see ss. 80 and 81 of that Act, and under the Notice of Accidents Act, 1906, see 1905, No. 934, S. R. & O. (1906), p. 490; and as to general rules under the Metalliferous Mines Regulation Act, 1872, see s. 23, and as to special rules thereunder, ss. 24—30; *Gordon* v. *Anderson*, [1910] S. C. 26.

(*d*) See *ante*, p. 924, note (*a*).

(*e*) The words between brackets will be omitted when the railway itself is to be fenced.

the same with a good & substantial arch, constructed to the satisfon of the lessor or his agent, unless he shl signify his desire that the same shl be left open, in wch case the same shl be left open accordgly, togr with all air-courses, water-courses, passages & other works & conveniences belongg thereto in good & serviceable condon.

Not to make unnecessary shaftsand to secure shafts (*a*).

19. And will not open or make any unnecy adits, pits, or shafts on the sd lands, & will durg the sd term well & sufftly bind, support, maintain & secure with timber or other good & sufft materials all shafts, tunnels, adits, drifts, & workgs that may be made or used in the sd lands, & the same so bound, supported, or secd at the end or sooner determinon of the sd term will quietly yield up to the lessor.

Not to interfere with roads or streams (*b*).

20. And will not interrupt or interfere with any existg road, rly, tramway or other communicon, or with the natural course of any stream or water-course save as hby expressly authorised : And will not throw any spoil, rubbish, or refuse into any stream flowg through the lands afsd.

To make slime pits for purifying mineral water.

21. And will forthwith or as soon as required by the lessor or his agent [upon or within a suitable piece or pieces of land to be from time to time, as occasion shl require, set apart & appropriated for this ppose by the lessor or his agent], dig & construct for the interception, reception, & purifying & cleansg of the mineral water comg from the dressg-floors, or any of them, bfe such water shl fall or be permitted to flow (directly or indirectly) into the river —— or other natural channels of drainage, a sufft number of pits of sufft dimensions, & of such construction in all respects, as shl be pperly adapted for purifying & cleansg the sd mineral water, & in case of any further measures being required for that ppose will take & carry out such further & other necy & reasble measures as may be required for the efficient purificon & cleansg of the sd mineral water bfe the same is permitted to flow into the sd river or other natural channels of drainage, the number & dimensions of such pits, & the choice in other respects of the pper means for that ppose, & any incidental question in relation thereto, in case of dispute, to be settled by arbitron.

(*a*) See *ante*, p. 952, note (*a*).

(*b*) Water percolating discontinuously through the earth is not a stream : *M'Nab* v. *Robertson*, [1897] A. C. 129.

22. And will return all water wch shl have been taken or intercepted from the river —— for workg the water or pumpg wheels, or for any of the other pposes of the sd mines & works, to the same river, or deliver the same for the use of the lessor or the lessees of other mines belongg to him, at such point or points on the lands afsd, & at such level as may be reasbly prescribed in that behalf by the lessor or his agent. To return water taken from river.

23. And will not do or suffer any act or thing whereby any stream, spring, or other water wch shl or may be used for workg any mill or machine shl or may be in any mner lessened or injuriously affected. Not to take water required for mills.

24. And will erect & keep pper gates & fences for protectg the tenants & occupiers for the time being of the sd lands from any trespass on the pt of the workmen & other psons employed in the sd mines: And will take such reasble means for stoppg any such trespass as may be required by the lessor or his agent, & (if so required) will discharge from their employmt any workman or pson commitg such trespass. To prevent trespassing of workmen.

25. And will discharge any workman or other pson employed in the sd mines who shl [keep a dog, or] poach, disturb, take, or kill the game or rabbits on any land belongg to the lessor. To prevent poaching.

26. And will not at any time do or permit any damage or injury to any house, bldg, or other erection, or garden now existg, [or any bldg hrafter erected for agricultural pposes, or with the consent of the lessees (*c*),] on the land afsd [or any reservoir on the sd lands], or do or suffer any act or thing whatever wch may in any wise tend to the injury or prejudice of the owner, tenant or occupier throf: And (in order effectually to avoid such damage or injury) will not allow any workgs to be carried within —— feet of the surface under any such house, bldg, erection, garden [or reservoir], as afsd, nor within a lateral distance of —— feet therefrom on any side throf: And if any damage or injury shl be occasioned to any house, bldg, erection, garden [or reservoir], by any breach of this covt, then & in such case will pay to the lessor & his tenants full compenson for such damage or injury [& for all consequential damage caused by the escape of the water from any such reservoir], the amt of such compenson in case of diffce Not to work near buildings, &c.

(*c*) See *ante*, p. 954, note (*a*).

to be settled by arbitron : And will keep the lessor indemnified against all actions, proceedings, claims, & demands in respt of any such damage or injury.

To work at sufficient depth beneath river, &c.

27. And will not work any ground beneath the river —— within a distance of —— yards from the bed throf, nor beneath the lands coloured —— on the sd plan within a distance of —— yards from the surface.

Not to place spoil banks near houses.

28. And will not place or allow any spoil banks or other rubbish or refuse to be deposited or laid, or any dressg-floors to be made, except at a reasble & sufft distance from any house or garden.

To leave barriers at boundary of land.

29. And will not work any of the sd mines or minerals lying within the distance of —— fathoms measured inwards in a horizontal straight line from the limits of the lands afsd, to the intent that the sd mines & minerals lying within the distance afsd shl be left as barriers & wholly undisturbed by any mining operations.

To preserve surface mould.

30. And will not cover with ores or rubbish or orwise waste any meat earth, mould, or soil within the lands afsd, but will, as far as circes will admit, preserve & lay aside the same in heaps on some convenient pt of such lands for the use of the lessor or the occupiers for the time being throf.

To weigh minerals (*a*)

31. And will place at the entrance to each adit, pit, or workg, or in some other convenient place or places upon the lands afsd, to be approved of by the lessor or his agent, one or more good & pperly constructed weighg machine or machines, And will cause to be weighed thrin all [coal & other minerals] raised or got under or by virtue of these psnts [& also all (coal & other minerals) brought from any adjoing mines through, on, or over the mines & premes hby demised under the liberty in that behalf hrinbfe grted], And will cause the weights & quantities so ascertained to be forthwith duly registered at the weighg house or houses, And will also at the close of each day cause the total quantity of the [coal & other minerals] weighed

(*a*) As to the appointment of a check weigher by the men employed in coal mines, see Coal Mines Regulation Act, 1887, s. 13, as amended by Coal Mines (Weighing of Minerals) Act, 1905. A person appointed check-weigher by the other miners under these Acts ceases to be so employed on expiry of notices determining the contracts of all the individual miners : *Richards* v. *Duffryn Co., Ltd.*, [1923] 2 Ch. 520. As to other industries, see Checkweighing in Various Industries Act, 1919.

as afsd durg the day to be entered in pper books of account to be kept for that ppose at the countg-house of the sd colliery [mines] in such mner that all [coal & other minerals] subjt to galeage, *or*, " footage," [or way-leave] rents or royalties or in respt whrof any exemption is claimed shl be clearly distinguished & shown.

32. And will permit the lessor, his agents & servants, at all reasble times durg the term to inspect & test the accuracy of the weighg machine or machines to be kept as afsd, & the weights used thrin. That lessor may inspect weighing machines.

33. And will permit the lessor to employ a pson to be psnt at the weighg of all [coal & other minerals] weighed as afsd, & to keep an account throf & to check the accounts kept by the lessees. That lessor's agent may be present at weighing.

34. And will not employ as weigher any pson who shl be objected to by the lessor, or his agent, for any reasble cause, & if any dispute shl arise as to the reasbleness of such objection the same shl be referred to arbitron. That lessor may object to weigher.

35. And will give twenty-four hours' notice in mner afsd to the lessor, or his agent, of the time of the weighg [or division] of the copper, copper ore, tin, tin ore, lead, lead ore, & other metals, ores, & metallic minerals raised or got by virtue of these psnts. To give notice to lessor of time of weighing minerals.

36. And will within two days after the delivery or consignmt of any ores, metals, or minerals to or on account of any pchaser or pchasers throf deliver to the lessor, or his agent, a just account in writg of the ores, metals, or minerals so delivered or consigned with sufft parlars as to price, time of paymt, & orwise. To deliver account of ores sold.

37. And will at all times keep at the countg-house or office of the sd mines accurate & regular accounts containg full entries of all [coal] & other minerals raised or got by virtue of these psnts [& made marketable & of the sales throf] & of the times of the removal of the same from the premes togr with all such parlars of weights, quantities, dates, [sales,] & other facts & circes as may be necy or pper, And will if required verify such accts by the statutory declaron of their clerk or book-keeper & also of the lessees themselves, so far as their knowledge extends. To keep accounts.

38. And will on each of the half-yrly days hrinbfe appted To deliver accounts

half-yearly. for paymt of rents & royalties deliver to the lessor, or his agent, a true account showing the total amt of [coal & other minerals] raised or got durg the precedg half-yr by virtue of these psnts, & distinguishing the amt of [coal & other minerals] subjt to galeage, *or*, "footage," rents or royalties from the amt in respt of which any exemption is claimed [& the parlars of all sales throf] [& also an account of all coal [& other minerals] brought from any adjoing mines through or over the mines & premes hby demised under the liberty in that behalf hrinbfe grted] AND WILL if required verify such accounts, &c., *as in precedg form.*

To keep plans of mines (*a*). **39.** AND WILL at all times durg the sd term keep [& will, on each of the half-yrly days hrinbfe appted for paymt of rents & royalties, deliver to the lessor, or his agent] true & correct plans & sections of the mines hby demised & all the workgs throf, [& of any mines worked through or the minerals from wch are brought through, under, or over the mines & premes hby demised] [& of all seams, veins, or lodes wch shl have been discovered thrin], upon wch the extent, posson, & actual condon of the works shl at least once in every half-yr be accurately set forth & delineated; such plans & sections to be made to the scale of one in —— on the horizontal or ground plane, & of one in —— in the vertical plane, [& to be kept at the countg-house of the sd mines].

To allow lessor to inspect accounts and plans. **40.** AND WILL permit the lessor, or his agents, at all reasble times to have access to & inspect & take copies of or extracts from the books of account, plans & sections, to be kept as afsd.

To deliver lists of workmen. **41.** AND WILL on the —— day of —— in every yr durg the sd term, or within —— days thrafter, deliver to the lessor, or his agent a full & true list of the names of all the psons employed in workg the sd mines, specifying the names of the miners or labourers who during the yr next precedg such —— day of —— shall have been employed in working or drivg each seam or lode.

To mark boundaries of mines. **42.** AND WILL make & maintain distinct & well-secd marks in the roof, side, or other convenient pt of every level or headway wch shl cross the boundary of the mines & premes hby

(*a*) As to coal mines, see Coal Mines Act, 1911, ss. 20, 21, 23. As to other mines, see Metalliferous Mines Regulation Act, 1872, s. 19.

demised into or out of any adjoing mines & workgs so as to enable the lessor, or his agent, at all times to determine the accuracy of the surveys kept by the lessees, & of the return of minerals based thron.

To allow lessor to inspect workings (*b*).

43. And that the lessor, or his agents, servants, & workmen shl be at liberty at all reasble times during the sd term to enter into & upon, & to inspect the mines hby demised, & the works belonging thereto, & any adjoing mines or workgs carried on or worked in connection therewith, & to make surveys & plans throf, & afterwards to return therefrom witht any hindrance or interruption, & shl for such pposes be at liberty to use the machinery & plant employed in or about the sd mines & works, & shl be effectually assisted by the agents, workmen, & servants of the lessees.

To make bridges, &c., for convenience of occupiers.

44. And will make & keep in repair pper bridges & passages for the safe & convenient passage of the occupiers for the time being of the sd lands, & other psons, & their cattle, carts, & carriages, over any watercourse, or open pit of any adit or adits, or other works, wch shl be made or erected by the lessees within the lands afsd: And will keep open the roads & paths over & across the sd land, & provide pper & convenient means of passage where the workgs shl interfere with the roads or paths now existg.

To deliver coal to lessor for his own use.

45. And will in each week durg the sd term supply the lessor with —— tons of —— coal, to be delivered at ——, at a price not exceeding £—— per ton, such coal to be free from rent or royalty.

To deliver stone and gravel, &c., to lessor.

46. And will from time to time, upon the lessor or his agent givg one calr month's notice in writg for that ppose, deliver to the lessor or his agent, free of charge, at the time specified in such notice, & at some place used by the lessees for the deposit of stone, sand, gravel, or road materials, such quantities of stone, sand, & gravel, in a merchantable condon, & of other materials for the makg, maintaing, & repairg of roads, or for use for any other pposes whatsr on the este of the lessor, as shl from time to time be so required, & shl permit such stone, sand, gravel, & road materials to be taken &

(*b*) See also *ante*, p. 959, f. 7. As to periodical inspections on behalf of the workmen, see the Coal Mines Act, 1911, s. 16, and the Mining Industry Act, 1920, s. 8.

carried away by the psons employed by the lessor, & give pper facilities for enablg them so to do: PROVD ALWAYS that subjt to the reservon of the lessor of such stone, sand, gravel, or road materials as he may require as afsd, & subjt to the lessees duly observg the covt lastly hrinbfe contd, the lessees shl be at liberty to make merchantable & dispose of all other stone, sand, gravel, & road materials got by them in the course of their sd workgs witht renderg any account or paying any dues in respt throf.

Not to obstruct lessor in working excepted minerals.

47. AND WILL exercise the rights, licences, & privileges hby grted in such a mner as to offer no unnecy or reasbly avoidable obstruction or interruption to the developmt & workg by the lessor of the mines & minerals hby excepted & reserved, or the transport, convce, or conversion of the produce throf, or to the use & enjoymt of any other right hby reserved to the lessor.

Not to cause damage.

48. AND WILL, in using & exercisg the licences & powers hby grted, commit no trespass, & do as little damage & injury as reasbly may be to the lessor, or his tenants, & to the surface & freehd of the sd lands.

Not to allow unauthorised persons to use way-leaves, &c.

49. AND WILL not at any time durg the sd term authorise or suffer any pson other than the lessees, or their agents, workmen, or servants, to use any way-leave, drift, level, instroke, outstroke, water-way, or other communicon from, through, over, or under the lands afsd, or used or occupied in connection with the sd mines.

To deliver up at end of term.

50. AND WILL, at the expiron or sooner determinon of the sd term, deliver up to the lessor the sd demised premes with all —— except such fixtures & things as tenants are by law entitled to remove, & wch the lessor shl not under the provon in that behalf hrinar contained require to be left, in such good & sufft state of repair as afsd, & in all respects in such state & condon as shl be consistent with the due observce & pformce of the sevl covts on the pt of the lessees hrin contained, & in pper order for the future workg & prosecution of the mines & works hby demised.

To observe Acts regulating mines.

51. AND WILL at all times durg the sd term in the workg of the sd mines, strictly conform to & observe all the regulons & requiremts contained in or imposed under the authority of the Coal Mines Act, 1911 [the Metalliferous Mines Regulon Acts,

1872 & 1875], or any other Act or Acts for the time being in force affectg the premes, & keep the lessor effectually indemnified against all penalties, damages, costs, & expses occasioned by any breach by the lessees, or any pson or psons employed in the sd mines, of any such regulons or requiremts.

LESSOR'S COVENANTS.

For quiet enjoyment (*a*).

1. That the lessees paying & renderg the sevl rents, royalties, & dues hby reserved & made payable, & observg & performg all the covts, stipulons, & condons hrin contained, & on their pt to be observed & pformed, shl quietly hold & enjoy the mines, minerals, liberties, licences, lands (*b*), & premes hby demised (*b*) & grted for & durg the term hby grted witht any interruption from or by the lessor or any pson rightfully claimg under or in trust for him [*or*, "under the sd settlemt of the —— day of ——," *or*, "the sd will of the sd ——."]

To renew (*c*).

2. That if the lessees shl be desirous of takg a new lease of the mines & premes hby demised after the expiron of the sd term of —— yrs hby grted, & shl at least six calr months bfe the expiron throf signify such their desire by a notice in writg to be delivered to the lessor or his agent, or left at the last known place of abode of the lessor in England, the lessor & all other necy pties (if any) will at or bfe the expiron of the sd term, at the costs & charges of the lessees, make & execute to them a new & effectual lease of all & singr the sd mines & premes hby grted or demised for a term of —— yrs, to commence from & after the expiron of the term hby grted, at & under the like rents, royalties, & dues, & with & subjt to the like covts & provons as are hrin contained, except this psnt covt for renewal

(*a*) See *ante*, p. 814, note (*a*).

(*b*) If licences only are granted without any demise of the lands, omit the words "lands" and "demised &."

(*c*) See *ante*, p. 815, note (*h*).

PROVISOES (*a*).

Power of re-entry (*b*).

1. PROVD ALWAYS, & it is hby agrd, that if the sd rents, royalties, & dues hby reserved or made payable, or any of them or any pt throf resply shl at any time be in arrear or unpaid for three calr months (*c*) after the same resply shl be payable (whether the same shl have been legally or formally demanded or not) *or*, " & demand for the same shl have been made at the countg-house or office of the sd mine by the lessor or his agent," or if the lessees shl make default in observg or pformg any of the covts, provons, or condons hrin contained, & on their pt to be observed & pformed [or if the lessees, or any or either of them, while the sd demised premes or any pt throf shl remain vested in them, or him, shl become bkpts or a bkpt, or shl enter into any arrangemt or composition with or for the benefit of their, or his, creditors either under the provons of any Bkptcy Act for the time being in force or orwise, or suffer an execution to be levied against their, or his, goods or ppty, or if their assns being a Co shl enter into liquidon whether compulsory or voluntary (not being a voluntary liquidon merely for the ppose of reconstruction (*d*))] then & in any such case it shl be lawful for the lessor, although he may not have taken advantage of some previous default of a like nature, to re-enter upon the sd demised mines, lands, & premes, or any pt throf in the name of the whole (*e*): & thrupon this psnt

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(*a*) Where the lease is in paragraphs the provisoes may be introduced by the words " Provd always, & it is hby agrd," and then the different clauses may be inserted without repetition of these words.

Relief against forfeiture.

(*b*) The power of the Court under the L. P. Act, 1925, s. 146, to relieve against a condition of re-entry in a lease extends to mining leases and grants of licences for mining purposes (see definition in s. 205 (1) (xiv), and to covenants against assigning or under-letting, &c., but with an exception of conditions of forfeiture on bankruptcy, &c. (see the definition in s. 205 (1) (i)), or an execution against the lessee (s. 146 (9) (*b*)), and covenants to allow the lessor to inspect the books, weighing machines, &c., and the mines themselves (s. 146 (8) (ii).

(*c*) In a lease under the S. L. Act, this must not exceed 30 days, see S. L. Act, 1925, s. 42 (1) (iii).

(*d*) As to forfeiture on a voluntary liquidation, see *ante*, p. 819, note (*c*).

Variation for licences.

(*e*) If licences only are granted, without any demise of the lands, say, in lieu of " to re-enter, &c.," " by any instrumt under his hand

lease or grt & the liberties, licences, & powers hrinbfe grted, & every clause & thing hrin contained shl absolutely cease, determine, & become void, but witht prejudice to any right of action or remedy wch shl have accrued to the lessor [either party] in respt of any breach of any of the covts or provons hrin contained.

Power to lessees to determine lease if coal lies too deep.

2. Provd always, &c., that if the lessees shl sink a shaft or bore to the depth of —— from the surface of the sd lands, witht findg a seam of coal of the thickness of —— at the least, it shl be lawful for them, at any time [within —— calr months] thrafter, to determine this demise by givg —— calr months' notice in writg to the lessor or his agent, & upon the expiron of such notice, & provd the lessees shl upon such expiron [or within —— days thrafter] render & pay all rents, dues, & royalties, compenson for damage, & other moys wch may be then due & payable under these psnts to the lessor or his tenants, & shl deliver up these psnts to the lessor or his agent, then this psnt lease or grt, & the liberties, &c., *as in last form.*

Power to abandon working in case of a fault.

3. Provd always, &c., that, if by reason of any fault in the coal-measures the sd seam of coal [any seams of coal, of the thickness of —— at least, found by the lessees] shl be thrown down under the sd lands to a greater depth than ——, it shl be lawful for the lessees to abandon & not to work such pt of the same seams as shl lie beyond such fault, & they shl not be bound to prove the extent of such fault.

Power to surrender if coal is of bad quality or exhausted (*f*).

4. Provd always, &c., that if it shl appear, after a full & sufft trial & exploron, *or*, "the expenditure by the lessee of £—— at least in trial borings," that the coal hby demised is of a bad, soft, or unmarketable quality, or that the coal wch havg regard to the condons & circes in wch similar seams are wrought in the district, may fairly be deemed to be workable with profitable results, shl be found to be exhausted; or that there shl be no such marketable coal, then, & in any such case the lessees may determine this demise at the end of any yr of the term hby grted by givg six calr months'

& seal duly notified to the lessees to determine the sevl liberties, licences, & powers hrinbfe grted to the lessees."

(*f*) As to the importance of this clause, see *Marquis of Bute* v. *Thompson*, 13 M. & W. 487; *Ridgway* v. *Sneyd*, Kay, 627. It is not a usual clause in a lease: *Strelley* v. *Pearson*, 15 Ch. D. 113.

notice in writg to the lessor or his agent, & upon the expiron of such notice, &c., *as in* f. **2**, p. 977: Provd that the sufficiency of any such trial & exploron, & the fact whether such exhaustion of coal as afsd has occurred, shl in case of dispute be submitted to arbitron.

The same if working is unsuccessful.

5. PROVD ALWAYS, &c., that if the lessees shl be unsuccessful in explorg & workg the mines & lodes within the lands afsd it shl be lawful for them to determine the sd term hby grted, previous to the expiron throf, on givg —— calr months' notice in writg of such desire to the lessor or his agent, & upon the expiron of such notice, &c., *as in* f. **2**, p. 977.

Power to lessees to remove engines, &c.

6. PROVD ALWAYS, &c., that it shl be lawful for the lessees (havg first pd & discharged the sevl rents, royalties, & sums of moy payable by them by virtue of these psnts, & havg observed & pformed all the covts & condons hrinbfe contd), at the expiron or sooner determinon of the sd term, or within —— calr months thrafter [unless the same shl be determined under the power of re-entry hrinbfe contd, & in that case at any time not less than fourteen days nor more than —— calr months after such determinon], to take down & remove for their own benefit all [fixed &] movable engines, machinery, plant, &c., *here insert appropriate words,* used or employed in or about the sd mines & works [wch the lessor shl not have elected to pchase under the provon hrinar contained] (except landlord's fixtures) makg reasble compenson for all damage done to the sd lands & premes by such removal.

Power to lessor to purchase engines, &c., at expiration of term.

7. PROVD ALWAYS, &c., that if at the determinon (*a*) of the sd term the lessor shl desire to pchase all or any of the [fixed or] movable engines, machinery, plant, &c., *here insert appropriate words,* & other articles & things used or employed in or about the carrying on & workg of the mines & works hby demised, & shl signify such desire by a notice in writg, signed by him or his agent, & given to the lessees, or left at the countg-house of the sd mines, one calr month at least bfe the determinon of the sd term, or if the sd term shl be determined under the power of re-entry hrinbfe contd, at any time within fourteen days after the determinon of the sd

(*a*) A provision giving the lessor a right to purchase before the determination of the lease is too oppressive to be enforced in equity: *Talbot* v *Ford*, 13 Sim. 173; cf. *Rolleston* v. *New*, 4 K. & J. 640.

term & in either case during the life of the survor of the issue now livg of His late Majesty King Edward VII., & twenty-one yrs (*b*) after the death of such survor & durg such further period (if any) as shl be lawful, then & in such case the articles & things specified in such notice shl not be removed by the lessees, but shl be pchased by the lessor, at a price to be determined in case of dispute by arbitron. *See Prec. II.*, p. 989.

Power of distress (*c*).

8. PROVD ALWAYS, &c., that if & so often as any pt of the rents, royalties, or dues hby reserved or made payable [to the lessor] shl be in arrear for twenty-one days, whether the same shl have been legally demanded or not, the lessor may enter into & upon any of the mines, lands, works & premes hby demised (*d*) [or any adjoing mines, lands, or works wch shl for the time being be held or occupied by the lessees in connection with the sd mines & premes (*e*)], & may seize & distrain all [coal] & other minerals actually gotten, & all fixed or movable engines, machinery, rails, trams, plant, horses, cattle, implemts, utensils, & things belonging to the lessees, within, under, or upon any of the sd mines and premes so demised [held or occupied] as afsd, & may sell (*f*) & dispose of the same & apply the produce throf for or towards the satisfon & paymt of all such arrears of rent, royalties, or dues, & also of all expses incidental to, or occasioned by such distress or distresses in like mner as landlords may distrain on goods by law distrainable for rent reserved by common demises.

Addition to power of distress.

9. AND IF any such distress shl not produce an amt of moy sufft to cover the amt so in arrear & the expses afsd, may stop all works & operons wch may be carried on in or

(*b*) As to the perpetuity limit, see *ante*, p. 827, note (*b*).

(*c*) A power of distress, substantially in the form in the text, contained in a mining lease was upheld in *Re Roundwood Colliery Co.*, [1897] 1 Ch. 373. In the absence of an express power a royalty can be distrained for: *Daniel* v. *Gracie*, 6 Q. B. 145.

Variation for licences.

(*d*) If the lease is in the form of licences only, in lieu of "hby demised," say "wch shl for the time being be held or occupied by the lessees, under the liberties or licences hby grted."

(*e*) This power of distress is valid, even when the lease has been assigned: *Daniel* v. *Stepney*, L. R. 9 Ex. 185. Mining leases are expressly excepted from the operation of the Bills of Sale Act, 1878 (see s. 6), in regard to certain instruments giving power of distress to secure debts.

(*f*) See *ante*, p. 823, note (*a*).

upon the sd demised premes, until the rent, wch shl then remain due, & all expses occasd by non-paymt throf, shl be satisfied: PROVD ALWAYS that the express powers of entry & distress hrinbfe contd shl be in addon to & not in lieu of any power of distress to wch the lessor may be by law entitled for recovery of the rents hby reserved.

Provision as to notices by reference to the L. P. Act, 1925 (*a*).

10. AND IT IS HBY AGRD that any notice hby required or authorised to be given to the lessor or lessees resply, shl be in writg, & may be given or served in any of the modes provd by section 196 of the Law of Property Act, 1925, with respt to notices to be given to lessors or lessees (as the case may be) under that Act.

Addition to arbitration clause (*b*).

11. PROVD ALWAYS that the clause lastly hrinbfe contd shl not in any mner abridge any of the rights or powers hrinbfe given to the lessor or his agent or enable any matter to be submitted to arbitron, wch, under the provons hrinbfe contd, wd be subjt to the absolute control of the lessor or his agent, or as to wch the right to go to arbitron is hrinbfe excluded.

Notices.

(*a*) See L. P. Act, 1925, s. 196 (5), which by virtue of the subsection applies unless a contrary intention appears. The clause may usefully be inserted as a reminder.

(*b*) For an arbitration clause, see *ante*, p. 828.

PRECEDENTS.

I.

AGREEMENT *for* LEASE *of a* COAL MINE (*c*).

AN AGRMT made this —— day of ——, BETN A., of, &c. (hrinar called the lessor, wch expression shl include the este owner or este owners for the time being of the reversion of the premes hby agrd to be demised expectant on the term hby agrd to be grted, where the context so admits), of the one pt, & B., of, &c., & C., of, &c. (hrinar called the lessees, wch expression shl include their exs, ads, & assns, where the context so admits), of the other pt. Parties.

1. [IN CONSON of the sum of £—— to be pd to the lessor by the lessees] the lessor shl grt & the lessees shl take a lease & execute a counterpt throf, OF THE unworked coal in the —— seam of coal & all the seams of coal existg below the sd —— seam of coal lying within & under the lands situate, &c., & called, &c., & estimated to contain —— acres or thereabouts parlarly described in the schdle hto & coloured —— & —— on the plan hto annexed, TOGR WITH all the existg plant & machinery (in the nature of landlord's fixtures) attached to the colliery. Agreement for lease. Parcels.

2. THE LESSEES, their agents & workmen, shl have power for the purpose of winning, workg, manufacturg, & carrying away the minerals hby agrd to be demised to enter upon that pt of the surface of the sd lands wch is coloured —— upon the sd plan but not upon any other portion throf witht the written consent of the lessor or his agent. Power to lessees to enter.

THE LESSEES shl have the followg powers over the lands coloured —— on the sd plan [so far as the lessor has the power to grt the same under a lease dated, &c., & made, &c., under wch he holds the sd premes]. Lessees' powers.

3. *Liberty to work*, p. 953, f. **5**.

4. LIBERTY TO deposit rubbish produced in workg & manufacturg the demised minerals, & to make watercourses & ponds & to divert & use the flowg water (so far as the lessor can To deposit rubbish and use water.

(*c*) See *ante*, p. 850, note (*a*); and p. 952, note (*a*).

authorise the same), but the right to make watercourses & ponds is grted subjt to the embankmts & puddling being made pperly to the satisfon of the lessor or his agent, & kept in repair to prevent the water from overflowg, percolatg, or orwise injurg the adjacent lands.

To take building stone and make bricks.

5. LIBERTY to take bldg stone from such pt of the sd land as shl be approved in writg by the lessor or his agent, & to erect brick-works & to manufacture fireclay into bricks [such stone & bricks to be used exclusively on the sd demised premes].

To build houses.

6. LIBERTY to erect upon the land coloured —— dwellg-houses for workmen or agents accordg to plans & on sites to be approved in writg by the lessor or his agent.

Way-leave.

7. A RIGHT of way to carry minerals from the adjoing mines over or under any pt of the demised premes or over any pt of the surface of the lands coloured —— on the sd plan.

Liberty of in-stroke and out-stroke (*a*).

8. LIBERTY OF instroke for workg the demised mines & premes from any adjoing mine & liberty of outstroke for workg such adjoing mines from & carryg minerals therefrom through the demised mines & premes, but so that no instroke or out-stroke drift made through the barriers to be left in the boundaries of the demised mines shl exceed —— in width, & no drift shl be nearer than —— yards to any other drift.

Powers to be subject to existing rights.

9. THE POWERS afsd over the surface are to be grted subjt to any rights or powers wch may have been previously acquired by any existg lessees or other psons under any existg leases or agrmts.

Reservation of minerals to lessor.

10. THERE SHL be reserved to the lessor all minerals & substances not hby specifically agrd to be demised, with full powers of winng, workg, manufacturg, & carrying away such excepted minerals & substances, & for that ppose to use the lessees' pits, rlys, tramways, & roads, payg reasble compenson for the use of the same, the amt throf in case of difference to be settled by arbitron.

Reservation of right of way.

11. ALSO POWER to the lessor & his tenants to pass with or witht horses, cattle, carts, & carriages over & along all or any of the roads now existg or to be made by the lessees on the sd demised premes.

(*a*) As to instroke and outstroke, see *ante*, p. 956, note (*a*).

12. Also power to the lessor to take & use from time to time for any ppose, witht makg compenson, any portion or portions of the lands coloured —— on the sd plan wch shl not have been appropriated by the lessees as hby authorised. Reservation of right to resume lands.

13. The term shl be —— yrs from the —— day of ——. Term.

14. The certain rent shl be £——, for wch sum the lessees may work such quantities of minerals as, at the royalties hrinar mentd, will be eql to the same, & the term "short workgs" hrinar contained means workgs short of such quantities, & the term "excess" or "surplus workgs" means workgs in excess of such quantities. Rent.

15. The royalties shl be as follows :— Royalties.

Large coal —— per ton.
Small coal —— „
Ironstone —— „
Fireclay —— „
Bldg stone —— per yard.

The ton to consist of —— pounds & all coal to be considered & taken as large coal wch will not on being screened pass through a screen of bars wch are [one] inch apt or wch shl be sold unscreened.

16. No royalty shl be pd for coal actually consumed by pumpg, windg, & ventilatg engines, ventilatg furnaces, & pit fires used for workg the demised minerals, provd the quantity consumed does not exceed —— p.c. of the total amt raised from the demised premes. No royalty for coal consumed.

17. No royalty shl be pd for bldg stone or fireclay made into bricks wch shl resply be used upon the premes. No royalty for stone or bricks used.

18. A way-leave rent of —— per ton shl be pd for minerals conveyed from adjoing ppties over or under the demised premes or over the surface of the lands coloured —— on the sd plan. Way-leave rent.

19. The lessees shl pay at the rate of £—— per acre by way of rent for any quantity up to —— acres of the surface lands wch shl be taken, & at the rate of £—— per acre for all such lands taken in excess of —— acres, & shl pay for crops, plantations, & timber upon any land taken at the time of taking posson throf; And shl also pay all compenson payable to the tenants, & at the end or other sooner determinon Surface rent and compensation to tenants.

of the lease shl make compenson for all permanent damage to the surface.

Rent for land taken for houses.

20. THE LESSEES shl pay at the rate of —— per acre by way of rent for such pts of the surface land coloured —— on the sd plan as shl be taken for the ppose of erectg dwellg-houses thron.

Time for payment of rents and royalties.

21. THE SD rents & royalties shl be payable half-yrly on the —— day of —— & the —— day of ——.

Liberty to make up short workings.

22. THE LESSEES shl be at liberty to make up the short workgs of any yr out of the excess of any of the next succeedg —— yrs only, but the surplus workgs of any past yr shl in no case be taken to make up the short workgs of any subseqt yr.

No merger of way-leave rent.

23. WAY-LEAVE RENT shl not merge in the certain rent.

Lessees' covenants.

THE LEASE or leases shl contain the followg covts by the lessees in the terms now usually inserted in leases of similar ppty in the County (*a*) of —— (that is to say) :—

To pay rent.

24. TO PAY rents & royalties.

To pay rates.

25. TO PAY rates & taxes.

To give notice before taking land.

26. NOT TO take any of the surface-land coloured —— on the sd plan witht givg one month's notice to the lessor or his agent, each notice to be accompanied by a plan upon wch the land proposed to be taken shl be shown.

To fence.

27. TO FENCE off all land on taking posson.

To sink pits.

28. TO COMMENCE sinking from the surface —— pits to the —— seam within —— calr months from the commencemt of the term on the land coloured —— on the sd plan, one pit to be not less than —— feet in diameter in the clear & the other not less than —— feet in diameter in the clear, in such situation as may be approved of by the lessor or his agent, & such sinkg to be pursued with pper diligence & dispatch & uninterruptedly & with at least —— able workmen constantly employed except in case of strikes or general lockouts or unavoidable accidents.

(*a*) It is hardly within the scope of the present work to refer to the particular customs obtaining in different parts of England, but for some customs, see MacSwinney, 3rd ed., as to Devonshire and Cornwall, pp. 474 *et seq.*, as to Gloucestershire, pp. 536 *et seq.*, and as to Derbyshire, pp. 577 *et seq.* For further information, see Bainbridge's Law of Mines and Minerals.

29. To SUPPLY to the lessor or his agent from time to time when required, accurate sections of the strata wch may be passed through in sinkg the pits to be sunk on the demised premes, & to supply parlars of all their explorons. To supply plans of explorations.

30. NOT TO erect or use any steam engine, coke-oven, brick-kiln, or any work or machine whatever, in wch coal or coke shl be burned or any kind of fire used, within fifty yards of the fence of any land from time to time taken posson of, & all land taken to be forthwith cleared & afterwards kept cleared of the underwood, gorse & long grass, with a view to avoid risk of fire to the adjoing lands, & to pay for injury occasioned by fire or orwise to any land, & the crops & plantations thron, wch shl not have been taken by the lessees as hby authorised. Not to light fires near boundary, and to pay for damage by fire.

31. To ERECT weighg machines, & to weigh the minerals got, & to allow the lessor's agent to be psnt at the weighg. To weigh minerals.

32. To KEEP separate accounts of the workgs from each of the seams, & to supply copies throf to the lessor or his agent. To keep and deliver accounts of workings.

33. To KEEP plans to a scale of —— chains to an inch. To keep plans.

34. NOT TO assn or underlet witht the consent of the lessor. Not to assign.

35. To LEAVE barriers if required by the lessor or his agent of —— yards in width in each of the demised seams adjoing the outside boundary of the demised premes. To leave barriers.

36. To STOP up effectually every instroke or outstroke drift at the end or other sooner determinon of the term if required by pper frame dams or orwise to the satisfon of the lessor or his agent. To stop instroke and outstroke drifts.

37. To KEEP the works in repair. To repair.

38. To DELIVER up the works & mines in good repair & workg order & pperly drained & ventilated to the satisfon of the lessor or his agent at the end or other sooner determinon of the sd term. To deliver up.

39. NOT TO work under or within —— yards of any bldgs now built or hrafter to be built [for agricultural pposes or with the consent of the lessees] upon the demised premes. Not to work under buildings.

40. To WORK the mines pperly & accordg to the most approved method of workg for the time being in use in the County of ——; & to observe the Coal Mines Act, 1911, or any statutory modificon throf for the time being in force. To work mines properly.

Not to injure mines.

41. NOT WILFULLY to do anything to injure the mines.

Not to allow water to accumulate.

42. NOT TO allow any water to accumulate in the workgs of any of the demised seams, & in the event of any water so accumulatg, to execute when required such works as may be necy to remove such accumulons, so as to prevent the loss of any coal wch ought fairly to be worked.

To supply lessor with coal (*a*).

43. To SUPPLY the lessor or his agent, from & after the winning of the coal, with one ton of large coal per week free of cost at the pit's mouth, the same not to be chargeable with royalty.

Lessees' powers.

THE LEASE or leases shl contain the followg powers to the lessees in the terms now usually inserted in leases of similar ppty in the County of —— :

To surrender if unsuccessful.

44. To SURRENDER the demised premes if the workg is unsuccessful.

To remove plant on determination.

45. To REMOVE the plant at the end or other sooner determinon of the sd term if the lessor shl not elect to pchase the same.

Lessors' powers.

THE LEASE or leases shl contain the followg powers to the lessor in the terms now usually inserted in leases of similar ppty in the County (*b*) of ——.

To re-enter.

46. To RE-ENTER if any rent or royalty is in arrear for —— days, or on breach of any of the covts, or if the lessees or their assns shl, while the sd demised premes or any pt throf shl remain vested in them, become bkpt or enter into any arrangemt or composon with their creditors, or being a Co, shl enter into liquidon whether compulsory or voluntary.

To distrain (*c*).

[**47.** To SUSPEND the works & to distrain upon the engines, plant & stock in hand, if any of the rents or royalties are in arrear for —— days.]

To purchase plant.

48. To PCHASE the lessees' plant at a valuon on givg to them six calr months' notice bfe the expiron or other sooner determinon of the term, or in the event of the same being determined by re-entry then on giving such notice within fourteen days thrafter.

To enter

49. To ENTER upon the premes durg the last yr of the

Stamp.

(*a*) Possibly, if the value is certain, this may subject the lease to extra stamp duty under the Stamp Act, 1891, s. 76.

(*b*) See *ante*, p. 986, note (*a*).

(*c*) See *ante*, p. 821, note (*c*) and p. 981.

lessees' occupon for the ppose of doing any act necy or useful for the future workg of the mines. during last year of term.

50. To EXAMINE the mines & premes at all times. To examine.

51. To WEIGH the minerals & to examine & copy the lessees' plans & accounts. To weigh.

52. FOR THE pposes afsd or any of them to have the assistance of miners, workmen, & others in the employment of the lessees, & the use of the machinery & plant free of charge. To have assistance.

53. THE LESSOR shl covt in the usual way for the lessees' quiet enjoymt. Lessor to covenant for quiet enjoyment.

54. THE LEASE or leases shl contain the usual arbitron clause, & such other clauses in addon to those hrinbfe mentd, & not being inconsistent therewith, as are now usually inserted in leases of similar ppty in the County of ——. Lease to contain arbitration clause.

55. THE LEASE or leases & counterpt of each lease shl be prepared by the solor of the lessor at the expse of the lessees, & the lessees shl pay all expses attendg this agrmt. Preparation of lease and costs.

56. UNTIL THE lease or leases shl have been grted, the lessor shl have the same powers & remedies by distress (*d*) & orwise in case of non-paymt of rent & royalties, & all other powers & rights as if the lease or leases had been executed. Lessor's powers before grant of lease.

57. THE LESSOR'S title shl not be enquired into (*e*). Lessor's title not to be enquired into.

58. ANY QUESTION arising out of this agrmt shl be settled by arbitron in the usual mner. Arbitration.

59. *Add any other clauses from the forms given above wch may be appropriate.*

IN WITNESS, &c.

[*Schdle of Pcels.*]

II.

LEASE *of* IRON *and* METALLIC MINE *in* DEVONSHIRE EFFECTED *by* GRANT *of* LICENCES ONLY.

PARTIES, A. (hrinar called the lessor, wch expression, &c., *see* p. 1061), 1; B. & C. (hrinar called the lessees, wch expression, &c.), 2. WITNESSETH as follows:— Parties. Witnesseth.

1. IN CONSON of the rents & reservons hrinar reserved, &

(*d*) See *ante*, p. 821, note (*c*).

(*e*) See L. P. Act, 1925, s. 44, *ante*, p. 853.

of the covts & agrmts by the lessees hrinar contained, the
Demise. lessor doth hby grt & demise unto the lessees, *exclusive liberty*
Parcels. *to get*, " iron, iron ore, umber, & other ores, metals, & minerals," p. 953; *to make works*, p. 954; *to use water*, p. 955: AND THE iron, iron ore, umber, & all other ores, metals, & minerals to be found & gotten by virtue of these psnts to take, raise, make merchantable, carry away, & dispose of at their will &
Habendum. pleasure, TO HOLD the sd licences, powers & authorities hby
To lessees. grted UNTO the lessees upon the trusts hrinar declared from the —— day of ——, for the term of —— yrs, *Reservon of fixed*
Reservation of rent. *rent*, p. 959, *witht the words in brackets; also a yearly royalty*, " for every ton of twenty-one cwt. of iron, iron ore, or umber," p. 960, AND ALSO renderg & deliverg on the sd premes one
Render in kind. —— pt or share of all such tin, tin ore, copper, copper ore, lead, lead ore, & all other metals & minerals, except iron, iron ore, & umber, raised or got, *continue form for render in kind or moy at lessor's option*, p. 961: *average clause*, p. 964.

2. *Trust for sale & interim powers of dealing with demised premes, as in* f. **3**, *post*, p. 1004.

Lessees' covenants. **3**. *Covenants by lessees*, p. 778.

(i.) *To pay the rents & royalties*, p. 964, f. **1**.

(ii.) *To pay rates, taxes & outgoings*, p. 964, f. **2**.

(iii.) *To weigh minerals*, p. 972, f. **31**.

(iv.) *To allow lessor to inspect weighing-machines*, p. 973, f. **32**.

(v.) *To allow lessor's agent to be present at the weighing*, p. 973, f. **33**.

(vi.) *Not to make any unnecessary shafts*, p. 970, f. **19**.

(vii.) *To fence pits*, p. 969, f. **16**.

(viii.) *Not to work near buildings, &c.*, p. 971, f. **26**.

(ix.) *To allow lessor to inspect*, " all or any adits, shafts, or works, wch shl be driven, sunk, made, or used within the sd lands," p. 975, f. **43**.

(x.) *To preserve surface mould*, p. 972, f. **30**.

(xi.) *Not to cause damage*, p. 976, f. **48**.

(xii.) *Not to allow easements to be acquired (where such a clause is material)*, p. 805, f. **46**.

4. *Power of re-entry*, p. 978, f. **1**.

5. *Power to lessor to purchase engines at end of term*, p. 980, f. **7**.

6. And if the lessor shl not elect to take such engines, machinery, apparatus, materials, & effects, at a valuon as afsd, then that the lessees will not remove the same or any pt throf, from the sd lands until all the shafts wch shl have been opened or made by the lessees shl have been filled in, or pperly covered or secd, & all rents, royalties, dues, & compenson then due from them shl have been pd accordg to the covts hrinbfe contd, after wch the lessees shl be at liberty durg —— calr months thrafter to remove the same. Not to remove plant before filling up pits, &c.

[**7.** *Power of distress*, p. 981, f. **8.**]

8. *Covenant by lessor for quiet enjoymt*, p. 977, f. **1.**

9. *Arbitration clause*, p. 828, f. **17**, *with the addition at* p. 982.

Add any other clauses from the above forms wch may be appropriate.

In witness, &c.

III.

LEASE *of* Slate Quarries *in* Wales (*a*).

Parties, A., *lessor* (hrinar, &c., *see* p. 983), 1; B. & C., *lessees* (hrinar, &c.), 2: WITNESSETH, *conson, demise of* "All those pieces of land situate, &c., & also" *the slate quarries*, p. 953, Togr with full power, licence, & authority, to open, dig, sink, search for, work, raise, & get all slate or slate-rocks of every kind in, from, or out of the lands & ppty afsd, & for that ppose to remove & take away any surface soil, & to dig, sink, & drive any new pits, shafts, soughs, levels, trenches, dams, embankmts, drains, & watercourses in or about the sd quarries or works: And to have, use, alter, & divert the pits, shafts, soughs, levels, trenches, dams, embankmts, drains, & watercourses now existg, or hrafter to be opened, or made, in, under or upon the sd lands & ppty, or any pt throf: And to make new, & to use, stop up, alter, & divert the psnt & any new tramways & other roads, inclined planes, levels, drifts, & works in or upon the sd lands & ppty, or any pt throf: And to Parties. Demise. Liberty to quarry. To dig pits, &c. To divert shafts, &c. Alter roads, &c. Put up

(*a*) As to fencing, see the Quarry (Fencing) Act, 1887; and as to the use of gunpowder in slate mines, see the Slate Mines (Gunpowder) Act, 1882.

machinery. make, build, & erect upon any pt of the sd lands & hds any engines, machines, wheels, pumps, mills, & bldgs whatsr: AND

Pull down houses. TO alter & pull down any house or bldg now standg, or hrafter to be erected on the sd lands [witht any liability or obligon to rebuild the same], for the better or more effectually gettg, dressg, makg merchantable, & carrying away such slate as afsd, or for workg or carrying on any works or quarries hby

Make drains. authorised to be made or worked: AND WITH full right to cut & make drains, gutters, pits & trenches for keepg & conveying water for such engines, machines, wheels, pumps, mills, & other

Get stone and clay. necy uses in & about the sd works or quarries: AND ALSO to dig & get, in, upon, or out of the sd lands & ppty, such stone, clay, & other materials, as may be necy or requisite for makg, repairg, & maintaing any works, bldgs, tramways, waterways, or other things now existg, or hrafter erected, or made in

Right of way. connon with the sd quarries: [WITH free right of passage for the lessees, their servants, agents, & workmen, with horses, carts, carriages, or orwise in, upon, & over all roads, ways, levels, & drifts for the time being upon or under any other lands of the lessor not hrinbfe demised, for carrying away the sd slates, & for carrying & bringing any materials & things whatsr to or from the sd quarries.] *Reservon to lessor of liberty to enter & inspect works, substitutg* "quarries" *for* "mines," p. 959: To HOLD, use, exercise, & enjoy the sd lands, slate-rocks, quarries, works, powers, & premes hrinbfe demised & grted, subjt to the respective estes & interests of the sevl tenants of the same lands & ppty, UNTO the lessees upon the trusts hrinar declared from the —— day of —— for the term of twenty-one yrs: *Reservon of certain rent,* p. 959; *& royalty* "of —— for every ton (consistg of —— lbs.) of slate (except rough flags), of a size exceeding 100 superficial inches, wch shl be got & made durg the sd term," p. 960: AND ALSO PAYING thrfor durg the sd term a royalty of —— for every ton (to be calculated as afsd) of rough flags & lintels & slate of a size not exceedg 100 superficial inches, wch shl be got & made durg the sd term: PROVD ALWAYS, & it is hby agrd & declared that the qtrly paymt of £—— made on any qtr day in respt of the sd certain yrly rent of £——, shl be taken in pt paymt (so far as the same shl extend) of the sd royalties of —— & —— per ton, accrued due in the qtr wch shl immedly

Habendum.

To lessees.

Reservation of rent.

Royalty for large slates.

Royalty for small slates.

Certain rent to be in part payment of royalties.

precede such qtrly day. *Average clause*, p. 964. *Trust for sale & interim powers of dealing with demised premes, as in* f. **3**, *post*, p. 1004. *Covts by lessees to pay rents & royalties*, p. 964; *to pay rates*, p. 964: AND WILL keep true & pper books of account of all slates, slate-rocks, slate-flags & blocks, wch shl be gotten & made in the sd works, & will fairly & openly weigh all such slates, slate-rocks, slate-flags, & blocks, as shl be sent for shipment or transit by rly or orwise off the sd lands & ppty, & keep the sd books of account at the office or countg-house of the sd works: AND WILL permit the lessor & his agents at all reasble times durg the first fourteen days of every qtr of a yr of the sd term to inspect such books of account & parlars: AND ALSO that the lessees will psonally, or by their agents or managers, whenever required, verify the accuracy of the sd books of account & parlars: AND ALSO will at all times durg the sd term use & work in every respt the sd lands, rocks, quarries, & beds of slate, & make, manufacture, & work all the slate of every description raised or got out of the sd quarries of pper sorts, sizes, thicknesses, & dimensions in every respt accordg to the best & most improved method for the time being in use in the district of carrying on & workg slate quarries, & makg & manufacturg slates: AND WILL effectually prosecute & continue such works, & keep the sd quarries free & clear from all rubbish: AND WILL remove the rubbish, waste, & surface-soil from time to time, & deposit the same in some convenient & reasble pt of the sd demised premes, wch the lessor, or his agent, shl approve for that ppose, so as such deposit shl not injure the sd quarries, or impede the future workg throf; *to keep works in repair, & deliver up at end of term*, p. 976; *to allow lessor to enter & inspect*, "the sd rocks, quarries, & beds of slate & works," p. 975; *to make compenson for surface, damage*, p. 964; *power of re-entry*, p. 978; [*power of distress over* "all slates, slate-rocks, blocks, flags, machinery, engines, implemts, plant, horses, carts, live & dead stock, & all other effects whatsr then & there found, whether such engines, machinery, or other effects may be affixed to the sd lands or not," p. 981.] *Covt by lessor for quiet enjoymt*, p. 977. *Arbitron clause*, p. 828, *with the addition at* p. 982; *provon as to notices*, p. 982. *Add any other clauses from the above forms wch may be appropriate.* IN WITNESS, &c.

Lessees' covenants.

To keep accounts, &c.,

and permit lessor to inspect them,

and verify them.

To work quarries properly.

To prosecute works.

To remove rubbish.

Power of distress.

IV.

LEASE *of a* COAL MINE, *the* CLAUSES *being placed in* SCHEDULES.

Parties. *PARTIES*, A., *lessor* (hrinar called the lessor, wch expression shl hrinar & in the schdle hto, &c., *see* p. 983), 1; B. & C., *lessees* (hrinar, &c.), 2. WITNESSETH that in conson of the rents & royalties hrinar reserved & the covts on the pt of the lessees & condons hrinar contained, the lessor doth hby grt & demise unto the lessees, ALL THOSE mines, beds, veins, & seams of coal & fireclay, liberties, licences, & privileges mentd & described in the first pt of the schdle hto, EXCEPT & RESERVING unto the lessor, as in the second pt of the sd schdle is mentd, To HOLD the premes hby grtd & demised UNTO the lessees upon the trusts hrinar declared, from the —— day of —— for the term of —— yrs, Paying thrfor the sevl rents & royalties mentd & specified in the third pt of the sd schdle, SUBJT to the provons relatg to the sd rents & royalties expressed in the fourth pt of the sd schdle. *Trust for sale & interim powers of dealing with demised premes, as in* f. **3**, *post*, p. 1004. *Covts by the lessees with the lessor*, p. 788, as in the fifth pt of the sd schdle is expressed. *Covt by the lessor with the lessees*, p. 811, as in the sixth pt of the sd schdle is expressed: AND IT IS HBY AGRD & declared in mner expressed in the seventh pt of the sd schdle: AND IT IS ALSO HBY AGRD & declared that the sd schdle hto shl be deemed to be pt of these psnts & be read & construed accordgly. IN WITNESS, &c.

Witnesseth. Demise. Parcels. Reservations. Habendum. Rents. Provisions as to rents. Lessees' covenants. Lessor's covenants. Provisoes. Proviso that schedule shall be read as part of lease.

Schedule.

The Schdle above refd to (*a*).

The first pt.

Parcels. *Parcels*, p. 952; *liberty to work mines*, p. 953; *to sink pits & make works*, p. 954; *with proviso as to surface operations slightly altered*, p. 957; [*if necessary, liberty of instroke & outstroke*, p. 956; *to quarry*, p. 954; *to use water*, p. 955,] *lessees not to obstruct lessor's mining operations*, p. 957; *or to do unnecessary damage*, p. 957.

The second pt.

Reservations. SO MUCH & such pts of the sd mines, beds, veins, & seams

(*a*) It will be convenient to paragraph the clauses in the Schedule.

hby demised as is or are required for the support of any house or bldg now on the demised lands, *or*, " on the lands hrinbfe described & distinguished by a —— colour on the sd map " : *& also excepted minerals with liberties for workg the same*, p. 958 ; *to use tramways*, p. 958 ; *lessor to join in repairg tramways*, p. 958 ; *liberty to lessor to enter & inspect mines*, p. 959 ; *proviso that the lessor shl not hinder the lessees*, p. 959.

The third pt.

Rents

Fixed rent, with the words in brackets, p. 959 ; *surface rent*, p. 959 ; *galeage rents per ton of coal & fireclay*, p. 960 : [*way-leave rent*, p. 961 ; *spoil bank rent*, p. 961.]

The fourth pt.

Provisions as to rents.

All the afsd rents shl be pd free from any deduction except landlord's ppty tax (*b*), & mineral rights duty : *Proviso that a certain quantity of coal may be got witht paying royalty*, p. 962 ; *proviso as to accidents*, p. 963 ; *strike clause*, p. 963 ; *average clause*, p. 964.

The fifth pt.

Lessee's covenants.

To pay rents, p. 964 ; *to pay rates & taxes*, p. 964 ; *to pay compenson for surface damage*, p. 964 ; *to work mines effectually*, p. 965 ; *not to discontinue working*, p. 966 ; *to sink pits*, p. 986 ; *or, to execute other special works, see* p. 967 ; *to protect mines from encroachmt*, p. 968 ; *to fence pits*, p. 969 ; *to fill in or fence useless shafts*, p. 969 ; *not to interfere with roads or streams*, p. 970 ; *not to work near bldgs*, p. 971 ; *to weigh coals, &c.*, p. 972 ; *with, if thought necessary, the subsidiary clauses*, ff. **32**, **33**, **34**, **35** ; *to keep plans of mines*, p. 974 ; *to deliver accounts half-yrly*, p. 973 ; *to allow inspection of accounts by lessor*, p. 974 ; *to mark boundaries of mine*, p. 974 ; *to allow lessor to inspect workings*, p. 975 ; *not to obstruct lessor in workg excepted minerals*, p. 976 ; [*not to allow unauthorised persons to use wayleaves*, p. 976 ; *not to assign*, p. 806 ; *with the proviso ;*] *to keep works in repair & deliver up at end of term*, p. 976 ; *to observe the Coal Mines Act*, 1911, p. 976.

(*b*) Tithe is not payable as of common right in respect of coal, as coal is not an annual produce ; there are, however, some customs in certain places to pay one by way of tithe ; see MacSwinney, 4th ed., 582.

The sixth pt.

Lessor's covenants. *For quiet enjoymt*, p. 977.

The seventh pt.

Provisoes. *Power of re-entry*, p. 978; [*power of distress*, p. 981]; [*power to lessees to determine lease, if coal lies too deep*, p. 979; *or if coal is of bad quality or exhausted*, p. 979]; *Power to lessor to pchase engines at expiration of term*, p. 980; *arbitron clause*, p. 828; *with the addition*, p. 982; *provision as to notices*, p. 982; *add any other clauses from the above forms wch may be appropriate.*

V.

LEASES *of* SERPENTINE ROCK *in* CORNWALL (*a*).

Parties. *PARTIES*, A. (hrinar called the lessor, &c., *see* p. 983, 1; B. & C. (hrinar called the lessees, &c.), 2: WITNESSETH that

Witnesseth. in conson of the rents & royalties hrinar reserved & the covts on the pt of the lessees hrinar contained, the lessor doth hby grt

Demise. & demise unto the lessees, *liberty to get*, "all the serpentine steatite, soapstone, porphyry, granite, marble, olivine, asbestos,

Liberties. & diallage stone & rock," p. 953, *liberty to make & construct*, "adits, shafts, pits, & a jetty, pier, quay, or breakwater, sheds, houses, engines, & other bldgs, tramways, & roads," pp. 955, 956: EXCEPTG & RESERVG unto the lessor all timber, trees,

Reservation of timber and minerals, and quarries. wood, & underwood, & all copper, copper ore, lead, lead ore, tin, tin ore, & all other metals, minerals, & stone whatsr, other than the sd stone & rock hrinbfe demised: AND EXCEPTG & RESERVG all quarries of slate, & pits & veins, of clay & marl whatsr, with liberty for the lessor, &c., p. 958, f. **2**; *to use tramways, &c.*, p. 958; *lessor to join in repairg tramways*, p. 958; *liberty for lessor to enter & inspect mines*, p. 959; *Proviso that lessor shl not hinder lessees*, p. 959; *Habendum*, p. 784, f. **2**; *Reservon of fixed rent*, p. 959; *royalty*, p. 960. *Trust for sale & interim powers of dealing with demised premes, as in* f. **3**, *post*, p. 1004. *Covts by lessees to pay rents*, p. 964; *to pay rates*, p. 964; *not to discontinue workg*, p. 966; *to pay com-*

(*a*) See the Quarries Act, 1894. As to fencing, see the Quarry (Fencing) Act, 1887.

penson, for surface damage, p. 964; *to keep works in repair,* p. 968; *to fence pits,* p. 969; *not to interfere with roads or streams,* p. 970; AND ALSO will lay aside for the use of the lessor, all meat earth & soil wch shl be dug by the lessees, & will not within twelve months afterwards, lay any stones or rubbish thron; *to keep accounts,* p. 973; *deliver accounts half-yrly,* p. 973; *to allow lessor to inspect accounts,* p. 974; *& to inspect workings,* p. 975; *not to obstruct lessor in workg excepted minerals,* p. 976. AND FURTHER that if the lessees shl erect a jetty, pier, quay, or breakwater, by virtue of the liberty or licence hrinbfe contd, they shl allow the lessor & his tenants to use the same for all pposes wch shl not interfere with the works of or with the user of the same by the lessees, upon such terms as to the paymt for or mode of enjoymt of the same as shl be agrd upon by the lessor & lessees, or in default of agrmt shl be determined by arbitron; *to deliver up at end of term,* p. 976; *power of re-entry,* p. 978; [*power of distress,* p. 981]. *Covt by lessor for quiet enjoymt,* p. 977; *arbitron clause,* p. 828; *with the addition,* p. 982: *add any other clauses from the above forms wch may be appropriate.* IN WITNESS, &c.

To preserve meat earth.

To allow lessor to use jetty.

VI.

LEASE *of a* BRICKFIELD (*b*).

PARTIES, A., *lessor* (hrinar, &c., *see* p. 983), 1; B. & C., *lessee* (hrinar, &c.), 2. WITNESSETH that in conson of the rents, royalties, covts, & condons hrinar reserved & contained, & by the lessees to be pd, observed & pformed, the lessor doth hby grt & demise unto the lessees, ALL THOSE pieces of land, situate, &c., AND ALSO liberty to get clay, brick earth, & sand, & other materials to be used in the manufacture of bricks [or tiles] from the sd lands, & to manufacture the same into bricks [or tiles] on any pt (*c*) of the sd land, & to sell & dispose of the

Parties.

Witnesseth.

Demise.

(*b*) No mineral rights duty is charged in respect of common clay, common brick clay, common brick earth, or sand, chalk, limestone or gravel: Fin. (1909–10) Act, 1910, s. 20 (5).

(*c*) If the brickfield is near buildings some restrictions as to the position of clamps, kilns, and ash heaps may be required. The nature of the tiles, whether roofing or draining tiles, and the dimensions, must be stated.

bricks [or tiles] so manufactured, *liberty to use water*, p. 955. And also liberty to erect, construct, & maintain such engines, machinery, kilns, clamps, ovens, workshops, bldgs [cottages], erections, & things, & to form such roads, communications, ash heaps, spoil banks, & other conveniences on & over the sd lands as may be necy or convenient. [*General reservon of mines & minerals*, "other than the clay, brick earth, sand, & other substances hby demised," p. 958]; *liberty to lessor to enter & inspect works*, p. 959, f. **7**, *saying*, "the sd demised premes," & "the quantity of clay, brick earth, & sand actually got, & the number of bricks [& tiles] in course of manufacture or ready for sale," & *omittg the clause beginning* "for the

Habendum.

pposes afsd," To HOLD, use, & enjoy the sd premes hby demised UNTO the lessees upon the trusts hrinar declared

Reddendum.

from the —— day of ——, for the term of —— yrs, *Reservon of dead rent*, p. 959, f. **1**, *saying*, "may manufacture durg the half-yr, &c., —— bricks [& —— tiles]." And also a royalty to be pd on the days hrinbfe mentd of —— for every thousand bricks manufactured on the demised premes in excess of —— thousand durg the half-yr immedly precedg such paymt, & of —— for every thousand tiles

Proviso.

manufactured, &c., PROVD always that no royalty shl be pd in respt of any bricks or tiles used in the erection, construction, or maintce of any of the kilns, clamps, ovens, workshops, bldgs, cottages, erections, water-courses, culverts, drains, or things hby authorised (*a*). *Trust for sale & interim powers of dealing with demised premes, as in* f. **3**, *post*, p. 1004. *Covts by the lessees to pay rent & royalties*, p. 964; *to pay rates & taxes*, p. 964, *saying*, "the demised premes or the clay, brick earth, sand, & other materials got therefrom, or the proceeds, &c.," *to fence* "the demised premes," p. 969, *to prevent poachg*, p. 971,

Lessees' covenants.

Clamps, &c.

[*not to place clamps, &c., except in certain places*, p. 972, f. **28**, *mutatis mutandis* (*b*)]. And also that the lessees will

To pre-

(*a*) Sometimes an average clause (see p. 964, f. **17**) is inserted; but it appears to be inappropriate. If it is inserted a covenant to work effectually (see p. 965, f. **6**) should be inserted.

(*b*) It may be desirable to provide (i.) that the clay shall be worked from, say, E. to W.; (ii.) that the full depth shall be worked before new ground is broken; (iii.) that it shall be worked in accordance with sections and levels annexed to the lease, or to be fixed from time to time by the landlord or his agent.

lay aside & preserve the two topmost spits of soil from any pt of the premes where they may dig clay or sand, & will as soon as the clay, brick earth, or sand shl have been taken replace the sd two spits of soil & restore the surface so as to be fit for agricultural pposes, AND WILL not carry away from the demised premes any clay, brick earth, sand, or other substances obtained under the liberties afsd, but will manufacture the same on the demised premes & not elsewhere into bricks [or tiles], AND WILL at all times keep at the office on the demised premes accurate accounts showg the number of [bricks & tiles] manufactured on the demised premes, & of the sales throf, & of the terms, &c., *continue to keep accounts*, p. 973, *mutatis mutandis, to allow the lessor to inspect accounts*, p. 974, *mutatis mutandis*. AND ALSO that the lessor & his agents shl be at liberty at all times durg the sd term to enter upon & inspect the demised premes; AND ALSO will durg the sd term indemnify & keep indemnified the lessor against all actions, claims, damages, & expses wch may be instituted or occasioned in respt of the storage of ashes or other materials, or the manufacture of bricks [or tiles] on the demised premes or any annoyance or damage wch may be thereby occasioned to the neighbourhood. *To deliver up at end of term*, saying, "with all kilns, clamps, erections, & bldgs," p. 976; *Power of re-entry*, p. 978. [*Power of distress*, p. 981, *saying*, "all clay, brick earth, sand, & other materials actually gotten, & all bricks & tiles] partially or completely manufactured, & all fixed, &c."] *Covt by the lessor for quiet enjoymt*, p. 977; *Power to lessees to remove*, "all bricks [& tiles] completely manufactured & being on the sd premes," p. 980, f. **6**, *mutatis mutandis*. PROVD THAT if the lessees shl at any time be restrained by legal proceedings from makg or burng bricks upon the land hby demised or any pt throf or shl be mulcted in damages for such makg or burng, then & in either of the sd cases the lessees may give notice in writg to the lessor to forthwith determine this lease, & the same shl be determined accordgly subjt to the payment of all rents & royalties, & the observce & pformce of all the covts hrin contained, & by the lessees to be observed or pformed up to the time of such determinon; *arbitron clause*, p. 882, *with the addition*, p. 982. IN WITNESS, &c.

serve surface soil.

Not to carry away clay, &c.

To keep accounts.

To allow inspection by lessor.

To indemnify lessor against actions, &c.

Power to determine lease.

VII.

AGREEMENT *for* YEARLY TENANCY *of a* BRICKFIELD. *A short form* (*a*).

Parties. *PARTIES*, A. (hrinar, &c., *see* p. 983), 1; B. & C. (hrinar, &c.), 2.

Agreement to let. Parcels. Right to get clay and make bricks. **1.** THE LESSOR agrees to let to the lessees & the lessees agree to take as yrly tenants from the —— day of ——, ALL THAT field, situate, &c., WITH liberty to the lessees to get clay & sand therefrom, & to manufacture the same into bricks on any pt of the premes, & to erect such kilns, [clamps], sheds, or huts, as may be necy for such ppose.

Reservation of rent. **2.** THE RENT shl be a certain rent of £——, payable half-yrly on the —— day of ——, & the —— day of ——, & a royalty of —— per 1000 bricks to be pd on the days afsd on all bricks made on the premes durg the half-yr precedg each such paymt.

3. *Lessees not to discontinue workg, see* p. 966, f. **8.**

Lessees to repair road. **4.** THE LESSEES shl at their own expse keep the road from the sd field to the main road or highway from —— to —— in repair & good condon.

5. *To preserve surface mould & not to carry away clay or sand, as in last precedent*, p. 998.

6. EITHER PARTY may determine this agrmt by givg one calr month's notice in writg to the other, expirg on the —— day of —— in any yr.

Determination. **7.** IF THIS agrmt shl be determined by the lessor by notice expirg bfe the —— day of ——, he shl pay for all kilns, [clamps], sheds, & huts erected by the lessees on the sd field at a valuon made by two psons, one to be appted by each party, or an umpire in the usual mner, but in the event of the determinon of this agrmt in any other mner, the sd kilns [clamps], sheds, & huts shl belong to the lessor witht his makg any paymt for the same.

Power of re-entry. **8.** *Power of re-entry*, p. 978, f. **1**, *saying*, "may re-enter upon the premes, & put an end to this agrmt."

AS WITNESS, &c.

(*a*) See last Precedent and notes thereto.

VIII.

AGREEMENT *for letting from* YEAR *to* YEAR *a* QUARRY *of* BUILDING *and* ROAD STONE (*b*). *A short form* (*c*).

AN AGRMT made, &c., BETN A. (hrinar, &c., *see* p. 983), 1; B. (hrinar, &c.), 2. Parties.

1. IT SHL be lawful for the lessee to enter upon the —— farm, situate, &c., & to quarry stone from the quarry now open thron or from any fresh pits wch he may open adjacent thereto, from the —— day of —— from yr to yr till this licence is determined, AT the royalties followg (namely) —— per yard for all road stone & —— per yard for all bldg stone removed from the sd land. Licence to quarry. From year to year. Royalty.

2. THE AMTS of the royalties due shl be calculated up to each of the usual qtr days, & shl be pd within one calr month after the same. Royalties to be calculated and paid quarterly.

[**3.** THE LESSEE shl have a right of distress for the royalties upon all the stone wch shl for the time being remain on the sd land & upon the lessee's plant.] Power of distress (*d*).

4. No NEW pit shl be opened witht the lessor's written consent. No new pit to be opened.

5. THE LESSEE shl work the existg pit & any addonal pit or pits wch shl have been opened by him continuously & vigorously except in case of a general strike (*e*) or lock-out of workmen or other unavoidable interruption, & shl at his own expse keep the roads on the sd farm in good order & condon, but so that he shl not pay any royalty on the stone used for that ppose, & shl keep the quarry & any new pits wch he may open pperly fenced (*f*) so as to prevent accidents, & fill in any pit as soon as it is exhausted, & replace the mould so as to render it as fit as circes will admit for agricultural pposes. Lessee to work continuously.

(*b*) Stone appears not to be a mineral: see MacSwinney, 5th ed., p. 9 *et seq.* This agreement, however, seems to be a mining lease within s. 24 of the Fin. (1909–10) Act, 1910; and see *ante*, p. 952.

(*c*) See *ante*, p. 991, note. For an agreement for working a quarry, see *ante*, p. 76.

(*d*) See *ante*, p. 981, notes (*c*) and (*e*).

(*e*) As to strikes, see *ante*, p. 4, note (*b*).

(*f*) See the Quarry (Fencing) Act, 1887.

Power to determine agreement by notice.

6. EITHER THE lessor or the lessee may at any time give notice to the other of them to determine this agrmt, & thrupon the licence to quarry stone shl cease except that the lessee shl have the right to exhaust any pit then actually open, & the terms of this agrmt shl in such case continue in force until the whole of the stone then raised or to be raised from any open pit shl have been sold & the royalties pd & until the lessee shl have in all respects complied with clause 5 of this agrmt.

Power of re-entry.

7. IF THE lessee shl neglect to pay the rent or royalties for twenty-one days, whether legally demanded or not, or if he shl assn or underlet the premes [or if he shl become bkpt, or enter into an arrangemt or composon with his credors,] the lessor may by notice in writg given to the lessee or left for him at the sd quarry put an end to this agrmt. IN WITNESS, &c.

LEASES (MISCELLANEOUS FORMS) (*a*).

1. *Parties*, A. & B., *lessors* (hrinar called the lessors, wch expression, where the context so admits, shl include the este owner or este owners for the time being of the reversion of the premes hrby demised, expectant on the term hby grtd), 1 ; C., *lessee* (hrinar called the lessee, wch expression shl include his exs, ads, & assns, where the context, &c.), 2 : Witnesseth, *conson, &c.*, the lessors hby demise, &c., *parcels, habendum, reddendum*, to the lessors, *covts by the lessee with* " the lessors," *using that expression throughout : Power for*, " the lessors," to *re-enter :* And the lessors hby covt, &c., *to insure, &c., & for quiet enjoymt*, " witht interruption by the lessors, or any pson claimg under them or either of them " ; *power to lessee to determine lease on giving notice*, " to the lessors or either of them [or leavg such notice at their or his respective usual or last-known place of abode (*b*)]." In witness, &c. Lease by joint tenants.

2. *Parties*, A. (hrinar called the lessor, wch expression, &c.), 1 ; B. & C. (hrinar called the lessees wch expression shl include their exs, ads, & assns, where the context so admits), 2 : Wit- Lease to joint tenants.

(*a*) See *ante*, p. 830. The first 18 of these forms are intended merely to indicate the variations in each case from the common form of lease by an owner in fee to one lessee. As to using an interpretation clause, see *ante*, p. 778, note (*b*). The variations for an underlease are given in the precedent of an underlease, *ante*, p. 872. As to a lease made with the approval of the Court, see Seton, 7th ed., 987, 1759. A lease by several joint tenants to one or more of their number is effectual and valid unless the persons in whose power the lease is made are, by reason of any fiduciary relationship or otherwise, precluded from validly carrying out the transaction, in which latter case it will be liable to be set aside. L. P. Act, 1925, s. 72 (4), overruling *Napier* v. *Williams*, [1911] 1 Ch. 361. Although one joint tenant may release his equitable interest to the others, there can now be no severance of the legal estate : L. P. Act, 1925, s. 36.

(*b*) The words in brackets may be omitted in reliance on the L. P. Act, 1925, s. 196 (5) ; but may usefully be inserted until the statutory provision has become more universally familiar.

NESSETH, *conson*, the lessor hby demises unto the lessees, *parcels, habendum* to the lessees as joint tenants (*a*) from, &c., *reddendum;* AND THE lessees hby covt, &c. (*b*) that they the lessees, *using that expression throughout; proviso for re-entry on non-paymt of rent or breach of covt by*, the lessees or any or either of them, pp. 817, 978; *covt by lessor with* "the lessees" *to insure, &c.*, & for quiet enjoymt by, "the lessees." AND it is hby declared that the lessees as joint tenants of the premes hby demised shl have power, pendg the sale throf under the statutory trusts, but subject & witht prejudice to the covts on the pt of the lessees hrinbfe contd to mtge the sd premes or any pt throf for any sum at any interest for any ppose & in any mner & to sublease or orwise deal with the same in all respects as absolute owners (*c*). IN WITNESS, &c.

Interim powers of dealing with demised premises.

Lease to partners (*d*).

3. *PARTIES*, A. (hrinar called the lessor, wch expression, &c.), 1; B. & C. "carryg on business in co-ptnp togr as ——, under the firm name of —— at ——" (hrinar called the lessees, wch expression shl include their exs, ads, & assns, where the context so admits), 2: WITNESSETH, *conson*, the lessor hby demises unto the lessees, *parcels, habendum*, to the lessees upon the trusts hrinar declared from, &c., *reddendum:* [AND it is hby declared that subject & witht prejudice to the covts hrinar contd the lessees shl hold the sd premes upon trust to sell the same & to stand possessed of the proceeds of such sale, after

Trust for sale.

(*a*) See L. P. Act, 1925, s. 36, which provides that where a legal estate is limited to persons as joint tenants, it shall be held by them on trust for sale; but not so as to sever their joint tenancy in equity.

As to covenants by several lessees.

(*b*) The lessees' covenants in leases to joint tenants are often in practice, although the beneficial interest survives, made joint and several. In any case the covenant should be worded so as to make the intention clear. As to the construction put upon covenants in this respect, see *Burns* v. *Bryan*, 12 App. Cas. 184, where in a Scotch lease to joint tenants the covenant was held to be joint and several; *White* v. *Tyndall*, 13 App. Cas. 263, where conversely in a lease to tenants in common, the covenant was held to be joint only; and *United Dairies, Ltd.* v. *Public Trustee*, [1923] 1 K. B. 468, where each tenant in common was held liable on the whole covenant; Norton on Deeds, 512; Leake on Contracts, 7th ed., 313 *et seq.*; and 1 Wms. Saund. 162, notes.

(*c*) As to the desirability of expressly conferring these powers, see *ante*, p. 505, note (*c*).

(*d*) Where the lease is to several taking as tenants in common in equity, the lease will be in the same form except that the trusts of the proceeds of sale and of the rents and profits until sale will be, for "the sd B. & C. as tenants in common in equal shares," or as the case may be.

paymt of the costs throf, & also of the rents & profits throf until sale upon the trusts & with & subject to the powers & provons applicable thrto as pt of their ptnp ppty [*or* the ptnp ppty of the sd firm], & that pendg the sale throf but subject & witht prejudice as afsd, the lessees shl have power to mtge, sublet, or orwise deal with the sd premes or any pt throf for the pposes of the sd ptnp in such mner as the partners for the being shl from time to time determine *or adapt*, f. **2** & **3**, pp. 623, 624]. Interim powers of dealing with demised premises. AND THE lessees hby covt, &c., that they the lessees, *using that expression throughout; proviso for re-entry on non-paymt of rent or breach of covt by*, [or on bkptcy of] the lessees, or any or either of them, pp. 817, 978; *covt by lessor with*, "the lessees," *to insure, &c., & for quet enjoymt by*, "the lessees." IN WITNESS, &c.

4. *PARTIES*, The —— Co, Ltd, whose registered office is at —— (hrinar called the Co, wch expression shl include their assns where the context, &c.), 1; B. (hrinar called the lessee, wch expression, &c.), 2: *This will be in the form for a lease by joint tenants*, f. **1**, p. 1003, *using throughout the expression*, "the Co," *except that notices by the lessee may be given*, "to the Co, or left at their registered office." IN WITNESS, &c. Lease by limited company.

5. *PARTIES*, A. (hrinar called the lessor, wch expression, &c.), 1; The —— Co, Ltd, whose registered office is at —— (hrinar called the Co, wch expression shl include their assns where the context, &c.), 2. *This will be in the form of a lease to joint tenants*, f. **2**, p. 1003; *using throughout the expression*, "the Co," *and omitting the interim powers of dealing with the demised premes, the proviso for re-entry will, if so intended, include the case*, "if the Co shl enter into liquidon, whether compulsory or voluntary (*e*), or if their assns, not being a Co, shl become bkpt or enter into any arrangemt or composition, whether under any bkcy act or orwise, with their or his creditors." IN WITNESS, &c. Lease to limited company.

(*e*) As to the rights of the lessor on the company going into liquidation, see *Gooch* v. *London Banking Association*, 32 Ch. D. 41; *Fryer* v. *Ewart*, [1902] A. C. 187. As to reverter to the lessor on dissolution of the company without assigning the lease, see *Hastings Corpn.* v. *Letton*, [1908] 1 K. B. 378; *Re Woking U. D. C. Act*, 1911, [1914] 1 Ch. at p. 320. In such a case the lessor may be a trustee for any person equitably entitled to the leasehold premises: *Re Albert Road*, [1916] 1 Ch. 289. And see L. P. Act, 1925, s. 181, giving power to the Court to create by order a corresponding estate and vest the same in the person who would have been entitled thereto had it remained subsisting.

Lease by tenant for life or other person having powers of a tenant for life under the S. L. Act, 1925, variations where additional powers of leasing are conferred by the settlement (*a*).

6. *Parties*, A., *tenant for life* (hrinar called the lessor, wch expression shl include the este owner or este owners for the time being entitled to the immediate reversion of the land hby demised expectant on the term hby grtd where the context so admits), 1; [B., C., & D., *trees*, 2;] E., *lessee* (hrinar called the lessee, wch expression, &c.), 3: WITNESSETH, *conson* [*if a fine is taken it will be pd to the trees*], the lessor by virtue of the powers of the S. L. Act, 1925,(*b*) [and of certain additional or larger powers operatg & exercisable by him as if conferred by the sd Act (*c*)] & of every or any other power enablg him in

(*a*) As to the general provisions of the S. L. Act, 1925, see *ante*, p. 830, and Vol. 2, "Settlements Real." The S. L. Act, 1925, s. 41, authorises a tenant for life (including any other person having the powers of a tenant for life under the Act) to lease the settled land or any part thereof or any easement, right, or privilege of any kind over or in relation to the same for any purpose, whether involving waste or not, for a term not exceeding for a building lease 999 years (see s. 44), for a mining lease 100 years (see s. 45), for a forestry lease 999 years (see s. 48), and for any other lease 50 years, and (s. 50) to lease the surface, reserving the mines and minerals under it, or to lease the mines and minerals: cf. *Re Gladstone*, [1900] 2 Ch. 101.

Leasing powers under S. L. Acts.

As to building leases, see *ante*, p. 875, note; as to mining leases, see *post*, p. 1008.

Waste.

The provision in s. 41 expressly authorising leases though involving waste was introduced by the Act of 1882 (s. 6) as an extension of the power then previously used. As to what is waste, see Vol. 2, Settlements (Real).

Provisions as to rent, &c.

Section 42 (1) provides that save as thereinafter provided, every lease is to be by deed, and to be made to take effect in possession not later than twelve calendar months after date, or in reversion after an existing lease having not more than seven years to run at the date of the new lease (s. 42 (1) (i)), and is to reserve the best rent, see *Re Handman & Wilcox*, [1902] 1 Ch. 599 (discussed 46 Sol. J. 524); *Pumford* v. *Butler*, [1914] 2 Ch. 353 (which includes yearly or other rent and toll, duty, royalty or other reservations, s. 117 (1) (xxii)), having regard to any fine taken,

(*b*) The Act does not require that the lease should refer to it: *Mogridge* v. *Clapp*, [1892] 3 Ch. 382; but it is desirable that the intention that it should operate under the Act should be expressed. This form may be used *mutatis mutandis* for a lease under any other Act.

(*c*) See S. L. Act, 1925, s. 109. Under this section additional or larger powers of leasing may be conferred by the settlement, and any such powers so conferred will operate and be exercisable in the like manner, and with all the like incidents, effects, and consequences, as if they were powers conferred by the Act on a tenant for life. Under section 108, any such additional power which, by the settlement is conferred on the trustees of the settlement, will be exercisable by the tenant for life as if it were an additional power conferred on him. It appears to be not strictly necessary, though it is the common practice, to express in so many words, that the lease is made in exercise of the statutory or extended powers.

this behalf hby demises, &c., *parcels, habendum, reddendum generally; covts by lessee with* " the lessor," *using that expression*

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and any money laid out, or to be laid out for the benefit of the settled land, and generally to the circumstances of the case; but the value of a surrendered lease may be taken into consideration in fixing the rent and terms of the lease, s. 52.

Exceptionally, sub-s. (5) provides that a lease not exceeding twenty-one years at rack-rent, may, where the tenant is not made dispunishable for waste, be granted without giving any notice, and notwithstanding that there are no trustees for the purposes of the S. L. Acts, by writing under hand only if the term does not exceed three years from the date. See 37 Sol. J. 76. In any such case care must be taken that the lessor does not covenant to rebuild in case of fire or even to do outside repairs.

As to leases, &c., by a tenant for life for public and charitable purposes, see s. 55; and for the purpose of the erection thereon of small dwellings, or to a county council for the purpose of small holdings, see s. 57.

Fines.

Any fine (other than a fine received on the renewal of a lease to which the land was subject at the date of the settlement, and of which the lessee could compel a renewal) taken is applicable as capital: S. L. Act, 1925, s. 42 (4), and must be paid to the trustees: S. L. Act, 1925, s. 75; who should therefore in that case be parties, or else sign an indorsed receipt.

As to covenants, &c.

The lease must contain a covenant by the lessee for payment of the rent, and a condition of re-entry on non-payment within a time not exceeding *thirty* days: S. L. Act, 1925, s. 42 (1) (iii). A counterpart is to be executed by the lessee, and delivered to the tenant for life, but the execution of the lease by the tenant for life is to be evidence that this is done, s. 42 (2). A statement contained in, or endorsed on a lease signed by the tenant for life, respecting any matter of fact or calculation under the Act in relation to the lease, is in favour of the lessee and those claiming under him, to be sufficient evidence of the matter stated, s. 42 (3).

Covenant for renewal.

As to the insertion of a covenant for renewal, see *ante*, p. 815, note.

Special powers.

The statutory leasing powers extend (ss. 63 and 117 (1) (v)) to the making of (1) a lease for giving effect to a contract entered into by a predecessor in title to make a lease, which, if granted, would have been binding on the successors in title; (2) a lease for giving effect in such manner and in so far as the law permits (43 (i)) to a covenant for renewal, the performance whereof could be enforced against the owner for the time being of the settled land; (3) a lease for confirming a previous lease which is voidable or void, but the lease must be such as could have been lawfully granted at the date of the original lease (43 (ii)); and (4) a new lease to take effect in reversion after an existing lease not having more than seven years to run, see s. 42 (1)(i). A covenant to repair should be required as a condition of a covenant to renew a lease of the principal mansion house: *Re Lacon*, [1911] 2 Ch. 17.

Surrenders.

The tenant for life has also full power to accept with or without consideration surrenders of leases and grant new leases (s. 52).

As to mansion house, &c.

By the S. L. Act, 1925, s. 65, " the principal mansion-house, if any, and the pleasure grounds and park and lands usually occupied therewith," are not to be leased without the consent of " the trustees of the settlement " or an order of Court, if (*a*) the settlement were made or came into operation

throughout, power for "the lessor" *to re-enter.* AND the lessor hby covts, &c., *to insure, &c., for quiet enjoymt,* "witht

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before 1926, and does not expressly provide to the contrary, or (*b*) if it were made or came into operation after 1925, and expressly provides that no such lease is to be made without such consent or order: see *ante*, p. 588.

Execution of deeds and contracts.

The tenant for life is, by s. 72, fully empowered to execute any deed for effecting the lease, and to make, vary and rescind contracts for leases, s. 90 (1) (ii).

Notice to the trustees.

As to the necessity for giving notice to the trustees and their solicitor of any intended exercise of the statutory powers, see s. 101 and s. 42 (5) (i) (dispensing with the necessity for notice in the case of ordinary rack-rent leases for not exceeding twenty-one years); and as to the desirability of excluding such necessity, see *ante*, p. 592, note, and Vol. 2, p. 336, note; and as to who are trustees, see *ante*, p. 590.

The tenant for life has discretion as to what are proper covenants in leases under the Act: *Davies* v. *Davies*, 38 Ch. 499.

Defective execution of leasing powers.

Reference may here be made to the provisions of the L. P. Act, 1925, s. 152, relating to the confirmation and the effect in equity, until confirmed, of leases invalidated by reason of non-compliance with the terms of the powers under which they are granted. The section applies to leases granted in the intended exercise of any power of leasing, whether conferred by an Act of Parliament or any other instrument; and it is provided by sub-s. 6 that where a valid power of leasing is vested in or may be exercised by a person who grants a lease which, by reason of the determination of the interest of the grantor or otherwise, cannot have effect and continuance according to the terms thereof independently of the power, the lease shall, for the purposes of the section, be deemed to have been granted in the intended exercise of the power, although the power is not referred to in the lease. See *Sutherland* v. *Sutherland*, [1893], 3 Ch. 169; *Gilbey* v. *Rush*, [1906] 1 Ch. 11; Woodfall, 21st ed., 251 *et seq.* There appears to be nothing to prevent the grant of a lease by a tenant for life under the statutory power to his wife: *Gilbey* v. *Rush*, *supra*. As to a lease by the trustees of the settlement to the tenant for life, see note to next precedent.

Married women.

Where a married woman of full age is entitled to a life estate or interest, whether for her separate use or as her separate property or not, she can grant a lease under the S. L. Act, 1925, s. 25 (1), without her husband according to f. 6, *ante*, p. 1006.

A tenant for life under the S. L. Act, 1925, may by s. 41 (ii) grant mining leases, including leases of easements or other rights or privileges over the settled land, for any term not exceeding 100 years.

Meaning of mining lease.

By s. 117 (1) (xv) a "mining lease" is a lease for mining purposes or purposes connected therewith, and includes a grant or licence for mining purposes; and "mining purposes" include the sinking and searching for, winning, working, getting, making merchantable, converting and disposing of, &c., mines and minerals in or under the settled land or any other land, and the erection of buildings and execution of works; and "mines and minerals" mean mines and minerals whether already opened or in work or not, and include all minerals and substances on or under the land, whether obtainable by underground or surface working.

By s. 117 (1) (xxii) rent includes yearly or other rents and tolls, duties,

interruption by the lessor or any pson claimg under him"
power for lessee to determine lease on givg notice "to the lessor"

As to rent, &c.

royalties, or other reservations by the acre, or the ton, or otherwise; and payment includes delivery. By s. 45, in a mining lease the rent may be according to the acreage worked or the quantities of any minerals gotten, made merchantable, converted, carried away, or disposed of, in or from the settled land or any other land, or any facilities given in that behalf, or may vary according to the price or value of the minerals gotten, or any of them; and such price may be (1) the saleable value; (2) the price in any trade or market price list; (3) determined in the manner prescribed by the lease; or (4) an average price during a specified period; a fixed or minimum rent may be reserved, with or without an average clause; and a lease may be made partly in consideration of the lessee having executed or agreeing to execute an improvement authorised by the Act (s. 83, and 3rd Schedule) for mining purposes. As to a varying rent, see *Re Aldam's S.E.*, [1902] 2 Ch. 46; and as to the power of a tenant for life to grant a lease of a right to let down the surface, see *Sitwell* v. *Earl of Londesborough*, [1905], 1 Ch. 460.

As to lease of minerals apart from surface, &c.

By s. 50 a lease may be either of land with or without an exception or reservation of all or any of the mines and minerals, or of any mines and minerals, and with or without a grant or reservation of powers of working, wayleaves or rights of way, rights of water and drainage, and other powers, easements, and rights for mining purposes in relation to the settled land or any other land.

Application of rent.

By s. 47 (unless a contrary intention is expressed, as to which see *Re Duke of Newcastle*, 24 Ch. D. 129; *Re Rayer*, [1913] 2 Ch. 210; *Re Hanbury's S.E.*, [1913] 2 Ch. 357), three-fourths of the rent where the tenant for life is impeachable for waste in respect of minerals and otherwise one fourth part thereof is to be set aside as capital, and the residue applied as rents and profits. This does not apply to a mining lease for giving effect to a contract entered into by a predecessor who was absolute owner: *Re Kemeys-Tynte*, [1892] 2 Ch. 211. A tenant for life of the proceeds of a sale under a trust for sale and entitled to the rents till sale must set aside three fourth parts of the mineral rents under a lease of unopened mines, L. P. Act, 1925, s. 28 (2): cf. *Re Ridge*, 31 Ch. D. 504. The tenant for life may be unimpeachable for waste as regards the minerals got from the mines either because the settlement contains an express power to work the mines or because they are open at the date of the settlement: *Re Chaytor*, [1900] 2 Ch. 804; *Re Hall*, [1916] 2 Ch. 488; see also Wolst. Conv. Acts, 11th ed., p. 182.

By s. 41 (iii) of the S. L. Act, 1925, a tenant for life may grant a forestry lease for any term not exceeding 999 years.

By s. 48. In the case of a forestry lease for the first ten years, a peppercorn rent may be made payable (sub-s. (1) (i)), the rent may be made to vary according to the value of the timber cut during any year (sub-s. (1) (ii)), a fixed minimum rent may be made payable (sub-s. (1) (iii)), any other provisions may be made for sharing of the profits of the user of the land between the reversioner and the Forestry Commissioners. "Timber" includes all forest products (sub-s. (2)).

As to the power of the Court to authorise leases or grants for longer terms

["or leavg the same at his usual or last known place of abode (*a*)"]. IN WITNESS, &c.

Lease by statutory owners or personal representatives under the S. L. Act, 1925, s. 26 (*b*).

7. *PARTIES*, A. & B., *statutory owners or psonal representatives* (hrinar called the lessors, wch expression shl include, &c., as in f. **6**), 1; C. *lessee* (hrinar called the lessee, wch expression, &c.), 2. WITNESSETH, *conson*, the lessors by virtue of the powers of the S. L. Act, 1925, & of every or any other power enblg them in this behalf hby demise, &c., *the rest of the form will be as in* f. **6**, *supra*.

Lease by trustees for sale (*c*).

8. *PARTIES*, A. & B., *trees for sale* (hrinar called the lessors, wch expression shl include, &c., as in f. **1**), 1; C., *lessee* (hrinar called the lessee, wch expression, &c.), 2. WITNESSETH, *conson*, the lessors by virtue of the powers of the Law of Ppty

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for building or mining purposes, see S. L. Act, 1925, s. 46, *ante*, p. 877, note; *Re O'Connell*, [1903] 1 Ir. R. 154; and, generally as to the power of the Court by order to authorise any transaction concerning the settled land to be effected by the tenant for life, see S. L. Act, 1925, s. 64.

(*a*) See *ante*, p. 815, note (*e*).

Power of statutory owners and personal representatives.

(*b*) Where there is no tenant for life or no person having under s. 23 of the Act the powers of a tenant for life, as may happen where the settled land is land belonging beneficially to an infant in fee simple or for a term of years absolute or where an infant would if of full age be a tenant for life, then, all the powers of a tenant for life in relation to the settled land are by s. 23 conferred upon the statutory owners. (See the definition of "statutory owners" contained in s. 117 (1)(xxv); that is to say, upon any person of full age on whom such powers are by the settlement expressed to be conferred, and if there are none then upon the trustees of the settlement; or in the case of an infant beneficially entitled, if the settled land is vested in personal representatives, then, by s. 26, in such personal representatives until a principal vesting deed has been executed.

Lease of settled land to tenant for life.

A lease of the settled land may be made either to the tenant for life alone or to him jointly with others (S. L. Act, 1925, s. 68). The lease will be made by the trustees of the settlement who for this purpose have all the powers of a tenant for life in reference to negotiating and completing the transaction, and may enforce any covenants by the tenant for life contained in the lease; and may be in the same form as a lease by statutory owners. As to the inability of a tenant for life to lease to himself and others under the earlier Acts: see *Boyce* v. *Edbrook*, [1903] 1 Ch. 836.

For a form of lease to a tenant for life by way of subsidiary vesting deed of land to be held on the trusts of the settlement, see *post*, p. 1016.

(*c*) Section 28 of the L. P. Act, 1925, confers upon trustees for sale all the powers in relation to land, including the power of leasing conferred by the S. L. Act, 1925, upon a tenant for life; and by s. 29 the power of leasing so conferred may be delegated and if delegated must be exercised (sub-s. 3) in the names and on behalf of the trustees delegating the power; the fact of delegation will therefore appear in the attestation clause only, see f. **26**, p. 729.

Act, 1925, & of every or any other power enablg them in this behalf hby demise, &c., *the rest of the form will be as in* f. **1.** *ante*, p. 1003.

9. *Parties*, A., *lessor* (hrinar called the lessor, wch expression, &c.), 1; B., the wife of C., of, &c. (hrinar called the lessee, wch expression, &c.), 2. WITNESSETH, *conson, if a premium is paid, say,* "of the sum of £—— now pd to the lessor by the lessee out of moys formg pt of her separate este," *& of rents & covts, demise,* "unto the lessee," *parcels, reservons, habendum,* "to the lessee as her separate este": *Covts by the lessee, & power of re-entry, & covts by the lessor & other clauses, all in the usual form.* In witness, &c. Lease to a married woman as her separate estate (*d*).

10. *Parties*, A., *mtgor* (hrinar called the lessor, wch expression shl include the pson or psons for the time being entitled to receive the rent hby reserved where the context so admits), 1; B., *mtgee* (hrinar called the mtgee), 2; C., *lessee* (hrinar called the lessee, wch expression, &c.), 3. WITNESSETH, Lease by mortgagor in possession and mortgagee (*e*).

(*d*) Before the M. W. P. Act, 1882, in order to avoid the difficulties arising from the granting of a lease direct to the wife (inasmuch as her covenants were at law a nullity, and the burden of them could not run with the land) the proper way was to grant the lease to the husband, or some other person as trustee, who entered into the covenants; but as every married woman is by that Act, s. 1, enabled to acquire, hold, and dispose of property, and to contract, and to sue and be sued, as a *feme sole*, the lease will now always be granted to her without the intervention of a trustee. Her covenants will be enforceable against her by action without joining her husband, to the extent of her separate estate; and the obligation of them will run with the land at law: see *Sutherland* v. *Sutherland*, [1893] 3 Ch. 169. Lease to a married woman.

(*e*) Where the mortgage was made after 31st December, 1881, or in the case of a mortgage made before that date, the provisions of the L. P. Act, 1925, s. 99, have by agreement between the mortgagor and the mortgagee been made to apply thereto (see sub-s. 16 and the form of agreement for this purpose given in Vol. 2, p. 264, and *post*, p. 1013), and where the terms of the proposed lease are such as to comply with the terms of the statutory power of leasing given by s. 99 to mortgagors and mortgagees while respectively in possession of the mortgaged property, the concurrence of both mortgagor and mortgagee in the lease is strictly unnecessary. In some cases, however, it may be desirable in the interest of the mortgagee that he should be a party to the lease and take independent covenants from the lessee.

Where the terms of the proposed lease are not authorised by the statutory power, the concurrence of the mortgagee in the lease may be avoided by the execution prior to the lease of an agreement between the mortgagor and mortgagee extending the statutory powers, in which case the extended powers may be exercised by the mortgagor alone, with all the incidents, effects, and consequences, as if they were conferred by the Act. Here

conson, the lessor with the consent (hby testified) of the mtgee & by virtue of the Law of Ppty Act, 1925, & of every or any other power enablg him in this behalf hby demises, *parcels, habendum, reddendum, generally ; covts by lessee with the lessor & also separately with the mtgee ;* [*covt by lessor to insure & for quiet enjoymt*], *proviso for re-entry ; power to lessee to determine lease on giving notice to lessor.* IN WITNESS, &c.

Lease by mortgagor or mortgagee in possession (*a*).

11. *PARTIES*, A., *mtgor or mtgee* (hrinar called the lessor, wch expression where the context so admits shl include the pson for the time being entitled to receive the rent hby reserved), 1 ;

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again the mortgagee, though unwilling to extend the power of leasing generally, may be prepared to concur in the proposed lease for the purpose of signifying his consent thereto with or without insisting on the lessee entering into separate covenants with him. In such cases it would seem that the lease granted by the mortgagor will operate in all respects as an exercise by him of his statutory power : see note (*a*), *infra*. The lessee will be considered as deriving title under the mortgagor, notwithstanding that the immediate reversion is in the mortgagee, and will therefore be bound by any covenants binding on the mortgagor of which he has notice : *John Brothers, &c., Co.* v. *Holmes*, [1901] 1 Ch. 188.

(*a*) See L. P. Act, 1925, s. 99. Assuming that the terms of the intended lease are such as are authorised by the section, the effect of the demise, whether made by the mortgagor or mortgagee, will be to create a subterm out of the mortgage term, if any, vested in the mortgagee.

The statute gives to the mortgagor while in possession and until a receiver is appointed power, as it would seem, to create a term out of the mortgage term, and so to convert the mortgage term into one expectant on the term granted by the lease. It is sufficient for this purpose that the lease complies with the terms of the power or with those terms as extended by the mortgagor and mortgagee : *Municipal, &c. Building Society* v. *Smith*, 22 Q. B. D. 70 ; *Robbins* v. *Whyte*, [1906] 1 K. B., 125. The mortgagor while in possession and receipt of the rents is the proper person to give licences and consents, and to give and receive notices, and exercise generally the functions of a landlord. See s. 98 of the L. P. Act, 1925, replacing s. 25 (5) of the Jud. Act, 1873. The mortgagee on going into possession is entitled as reversioner to all rents in arrear : see *Re Ind, Coope & Co.*, [1911] 2 Ch. 223.

Where the power is exercised by the mortgagee in possession the lease takes effect out of the mortgage term, if any, vested in him.

Where the mortgage is in the form of a charge by way of legal mortgage the mortgagee is given, by s. 87, the same protection, powers, and remedies, including the right to obtain possession and take proceedings from the occupiers and the persons in receipt of the rents and profits, as if the mortgage were created by demise or subdemise.

Where the lease is made by a receiver to whom the mortgagee has delegated his power of leasing, the lease should be made in the name of the mortgagee under the power conferred by s. 8 of the Act.

Care must be taken to reserve the rent generally, and not to the lessor expressly : see *ante*, p. 784, note (*k*).

On a lease by a mortgagor under the statutory power, failure to deliver

B., *lessee* (hrinar called the lessee, wch expression, &c., see p. 1003), 2. WITNESSETH, *conson*, the lessor by virtue of the L. P. Act, 1925, & every power enablg him in this behalf hby (*b*) demises, *parcels, habendum, reddendum generally ; covts by* " lessee " with " lessor " *power* for " lessor " *to re-enter covts by* " lessor," *to insure* (*c*), *&c., & for quiet enjoymt. Power to lessee to determine lease on givg notice to lessor.* In WITNESS, &c.

Agreement by mortgagor and mortgagee extending the statutory powers of leasing and of accepting surrenders (*d*).

12. *PARTIES*, A., *mtgor*, 1 ; B., *mtgee*, 2. *Recite mtge shortly* (*e*). Now it is hby agreed that the statutory powers of leasing conferred upon mtgors & mtgees resptly by s. 99 of the Law of Ppty Act, 1925, shl be extended in relation to the ppty comprised in the recited mtge so as to authorise the grantg of leases throf for any term, &c., *as the case may require.* AND further that the statutory powers of acceptg surrenders of leases conferred upon mtgors & mtgees resptly by s. 100 of the sd Act shl apply to the recited mtge but witht the restrictions contd in sub-s. 5 of that Act, *or as the case may require.* AS WITNESS, &c.

Lease by a lunatic (*f*).

13. *PARTIES*, A., *lunatic*, " a pson of unsound mind acting by B., of, &c., the committee of his este," *if not found lunatic by inquisition, say*, " a pson of unsound mind not so found by inquisition acting by B., the pson appted to exercise the powers of a committee of his este," (hrinar called the lessor, wch expression, &c., see p. 778), 1 ; C. (hrinar called the lessee, wch expression, &c., see p. 779), 2. *Recite order enabling the*

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a counterpart of the lease to the mortgagee causes the statutory power of sale to become immediately exercisable, but it does not invalidate the lease : Section 99 (11). See *Public Trustee* v. *Lawrence*, [1912] 1 Ch. 789.

(*b*) If the lessor does not enter into any covenant for quiet enjoyment the words " but not so as to imply any warranty or covenant " should be inserted here, so as to exclude any implied warranty or covenant arising from the word " demise " : see Norton on Deeds 117, 498 ; *Markham* v. *Paget*, [1908] 1 Ch. 697. As to mortgagees covenanting for quiet enjoyment, see *ante*, p. 815, note (*d*).

(*c*) The liability of mortgagees under this covenant might be limited as in the case of trustees, &c., *ante*, p. 815, note.

(*d*) See *ante*, p. 1011, note (*e*).

(*e*) The agreement may if preferred be made supplemental to the mortgage. If the same solicitors are acting for both mortgagor and mortgagee, it may be endorsed on the mortgage.

(*f*) Where the lunatic is entitled jointly with another person, his committee or receiver must, under an order in lunacy, concur with the other person. See L. P. Act, 1925, s. 22.

lease to be granted. Approval of master, see p. 643: NOW THIS DEED WITNESSETH, *conson,* "the lessor acting by the sd B. as afsd, hby demises," *parcels, habendum, reddendum, covts by,* "lessee," *with,* "lessor," *power for,* "lessor," *to re-enter, covts by,* "lessor" (*a*), *with,* "lessee": *Power to,* "lessor," *to re-enter.* IN WITNESS, &c.

Lease by parson under Ecclesiastical Leasing Acts (*b*).

14. *PARTIES,* A., *parson* (hrinar called the lessor, wch expression shl include his succors & assns, where, &c., *see* p. 778), 1; *Ecclesiastical Commrs* (hrinar called the Commrs) 2; B., patron of the sd rectory *or* "vicarage," 3; C., *lessee* (hrinar, &c., *see* p. 779), 4; WITNESSETH, *conson,* "the lessor by virtue of the powers & provons contained in the Ecclesiastical Leasg Acts, 1842 to 1865 [or any Act or Acts extending, amending or re-enacting the same], & of all other powers him enablg with the consent & approval of the Commrs, & with the consent of the sd B., as such patron as afsd testified by their resply being pties to & executg these psnts hby demises unto the lessee, *parcels,* "formg pt of the glebe lands of or belongg to the sd Rectory *or* Vicarage of ——," *habendum, reddendum* (*c*), *covts by lessee,* "with the

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(*a*) As to covenants by lunatics, see *ante,* p. 643, note. As to registered land, see the L. R. Act, s. 111.

(*b*) See *ante,* p. 832, note. Land vested in trustees on charitable or ecclesiastical trusts, is by s. 29 of the S. L. Act, 1925, deemed to be settled land, and the trustees have the powers of a tenant for life with reference thereto.

(*c*) For a mining lease insert "*Agrmt* that all rents, royalties, or sums of moy hby reserved & made payable (other than the sd surface & way-leave rents) shl be payable & pd to the Commrs as if they were the sole lessors of the premes hby demised or to their receivers for the time being, either at their office in London or at such other place (not being more than 20 miles from the demised lands) as the Commrs shl from time to time in writg appt, & that the sd surface & way-leave rents shl be pd to the lessor." The covenant as to compensation for surface damage will be to pay "on the —— day of —— in every yr to the lessor for the benefit of him & his tenants," and will be followed by a proviso "that any compenson that shl be payable in respect of permanent damage shl be paid to the Commrs." *Proviso,* that if any proceedings shl be taken by the Commrs upon or in relation to any covt reservon act matter or thing hrin contained, no objection shl be taken or made by any pson

lessor, & also by way of separate covt with the Commrs," *covt by lessor*, " to the intent to bind the reversion of the sd demised premes expectant on the term hby grtd & his successors in title thrto, but not so as to bind himself psonally or his este for the acts of his succors or their assns," *for quiet enjoymt: Proviso*, " that as betn the Commrs & any incumbent of the sd rectory it shl not be compulsory on the Commrs to take proceedings to enforce the observce or pformce of any of the covts on the pt of the lessee hrinbfe contd, but that it shl be entirely discretionary with them to take such proceedings or not as they may think pper." IN WITNESS, &c.

Lease of charity land (*d*).

15. *PARTIES*, A., B., & C. (hrinar called the Governors), 1; D., *lessee* (hrinar, &c., *see* p. 779), 2: WITNESSETH, that in psuance of an order duly made by the governors at a regular meetg of their body & in *conson, &c.*, the governors with the sanction of the Charity Commrs for England & Wales testified by an order under their official seal do hby demise, &c.

Lease by trustees under a power with sanction of Court to one of their number (*e*).

16. *PARTIES*, A., B., & C., *trees* (hrinar called the lessors, wch expression, &c., see p. 1003), 1; the said C., *lessee* (hrinar, &c., see p. 1003), 2; WITNESSETH, that in conson of the rents & covts on the pt of the lessee hrinar reserved & contained, the lessors, by virtue of the powers contained in the will & codl dated, &c., of Y., deced, & of every or any power enablg them in this behalf & in psuance of an order of the High Ct of Justice made in the Chancery Divon by Mr. Justice ——, dated, &c., made on a summons in the matter of the trusts of the sd will & codl, & in an action, &c., authorisg & approvg of the grantg of this psnt lease, do hby at the request of the lessee, demise unto the lessee, *parcels, habendum to*, " the lessee, his exs, ads, & assns," *reddendum*, And the lessee hby covts with the lessors in mner followg, &c. *Covts by lessors. Power to* " the lessee " *to determine the lease at the end of the first —— yrs.* IN WITNESS, &c.

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on the ground that the Commrs have or had no este or intt in the premes in reversion expectant on the determinon of this demise.

(*d*) See Charitable Trusts Act, 1853, ss. 26, 47; the Act of 1855, ss. 15, 16, 29, 38, 39. See also the Act of 1869, s. 12; and *ante*, p. 832; see also note (*b*), p. 648.

(*e*) See note to 1, *ante*, p. 1003, and note to Prec. XXIX., *ante*, p. 568. As to the necessity for the sanction of the Court arising from the lessee being one of the trustees, see 2 White & T. L. C., 8th ed., p. 738, notes to *Fox* v. *Mackreth*.

Lease, two sureties joining to guarantee rent and performance of covenants (*a*).

17. *Parties*, A., *lessor* (hrinar, &c., see p. 778), 1; B., *lessee* (hrinar, &c., see p. 779), 2; C. & D. (hrinar called the guarantors), 3: WITNESSETH, in conson, &c., *rent & covts by lessee*, "& of the covt by the guarantors hrinar contained," *demise, parcels, habendum, reddendum, covts by lessee, power of re-entry, & covts by lessor.* And the guarantors at the request of the lessee & in conson of the lease & grt hrinbfe contd, do hby jointly & severally covt & guarantee with & to the lessor that the lessee shl at all times duly pay the rents hby reserved in the mner & at the respective times hrinbfe appted for the paymt throf: And also duly observe & pform all the covts on the pt of the lessee & condons hrin contained: And that the guarantors resply, & their respective exs, or ads, will at all times hrafter, pay & make good to the lessor on demand, all losses, costs, damages, & expses occasioned to him by the non-paymt of the sd rents or any pt throf, or the breach, non-observce, or non-pformce of any of the sd covts & condons on the pt of the lessee: And further, that any neglect or forbearance on the pt of the lessor in enforcg or givg time to the lessee for paymt of the sd rents, or any pt throf, or the observce or pformce of any of the sd covts & condons, shl not in anywise release the guarantors or either of them, their or either of their exs, or ads, in respt of their or his liability under the covt or guarantee on their or his pt hrinbfe contd. In witness, &c.

XVIII.

SUBSIDIARY Vesting Deed *on* Lease *to* Tenant *for* Life *or* Statutory Owner (*b*) *under* Section 53 *of the* S. L. Act, 1925.

Parties, A. (hrinar called the lessor, wch expression, &c.), 1; B. & C., *trustees* (hrinar called the trustees [lessees, wch

(*a*) If the trustee in bankruptcy of the lessee disclaims the lease, the guarantor is not liable for any rent after the disclaimer: *Stacey* v. *Hill*, [1901] 1 K. B. 660. It may, therefore, be advisable to insert a covenant by the guarantors "that no tree in bkcy shl at any time hrafter disclaim this lease." As to discharge of sureties on dissolution of a company without assigning the lease, see *Hastings Corpn.* v. *Letton*, [1908] 1 K. B. 378.

(*b*) If there is no tenant for life the trustees will be defined as in square brackets, and there will be no party of the third part.

expression where the context so admits shl include their assigns or the pson for the time being entitled to the settled estes hrinar mentioned or his assns]), 2 ; D. tenant *for life* (hrinar called the lessee, wch expression where the context so admits shl include the pson for the time being entitled to the settled estes hrinar mentd or his assns), 3. WHAS by a ppal vestg deed (hrinar referred to as the ppal deed) dated, &c., & made, &c., the —— settled estes were vested in the lessee[s] upon the trusts of a settlemt dated, &c., & made, &c., & by [endorsemt on] the ppal deed the trees [lessees] were stated to be the trees of the settlemt for the ppses of the S. L. Act, 1925 : AND WHAS the lessor has agreed to grant to the lessee[s] such lease as hrinar contained : NOW THIS DEED WITNESSETH, as follows :—

1. *Conson, &c.*, the lessor doth hby demise, &c., *parcels*, *habendum*, for the term of —— yrs from the —— day of ——, 19—, to the lessee[s] upon & subject to the trusts hrinar referred to *reddendum*, " to the lessor."

2. COVTS by " the lessee[s] " with " the lessor."

3. POWER for " the lessor " to re-enter.

4. COVTS by " the lessor " to insure, &c., & for quiet enjoymt.

5. IT IS hby declared that the lessee[s] shl hold the premes upon & subject to the same trusts & provons as are declared by the ppal deed by reference as afsd with respt to the ppty thrin comprised.

6. THE trees [lessees] are the trees of the settlemt for all the ppses of the S. L. Act, 1925.

7. THE power of appointg new tree or new trees of the settlemt is vested in the lessee[s] *or as the case may be.*

XIX.

AGREEMENT *for* YEARLY TENANCY *of a small plot of* LAND *at a* NOMINAL RENT, *so as to* PREVENT *a* TITLE *being* ACQUIRED *under* the STATUTES OF LIMITATION (*a*).

Parties.

Agreement for tenancy.

PARTIES, A. (hrinar called the landlord), 1; B. (hrinar called the tenant), 2: WHEREBY it is acknowed & agrd, that the plot of ground situate, &c., now in the occupon of the tenant is & shl continue to be occupied by the tenant & his assns as tenants from yr to yr to the landlord, or other the este owner or owners for the time being of the freehd throf, at a yrly rent of one shillg if demanded, payable on the —— day of —— in every yr, such tenancy to be deemed to have commenced on the —— day of ——, & TO BE determinable by either party at any time, on givg one calr month's written notice to the other party. IN WITNESS, &c.

XX.

DEED *extending* TERM *of* LEASE *by endorsement* (*b*).

Recitals.

Residue of term in lessee.

Reversion in lessor.

PARTIES, A., 1; B., 2: WHAS the residue of the within mentd term of —— yrs is now vested in the sd B., subjt to the paymt of the rent & pformce of the lessee's covts reserved by & contained in the within written lease: AND WHAS the sd

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Mode of preventing Statute running.

(*a*) A mere acknowledgment that the piece of land is held under a tenancy at will, is not enough, having regard to 3 & 4 Will. 4, c. 27, s. 7. It should be from year to year, reserving a nominal rent and requiring short notice to determine it, and one payment of rent should be actually made and a receipt taken having regard to section 8 of the Act, as it might be contended that the demise, though in writing, is not a valid demise within the L. P. Act, 1925, s. 53, until rent has been accepted under it. See further on this point, Fawcett, L. & T., 3rd ed., 570 *et seq.*

(*b*) The form in the text is a reversionary lease, and before the L. P. Act, 1925, s. 149, conferred only an *interesse termini* till entry by the lessee: Elph. Introd., 7th ed., 294; *Lewis* v. *Baker*, [1905], 1 Ch. 46. Now, however, by virtue of sub-s. (2) of that section, the term takes effect according to the estate, &c., of the grantor from the date fixed for the commencement of the term without actual entry. This alteration in the law does not effect beneficial interests in respect of reversionary interests or terms created before 1926 (sub.-s 4), and accordingly a reversionary term which before 1926 subsisted as an *interesse termini* is not included in the expression "unexpired term" in Sched. II. of the Licensing Act,

A. is the owner of the legal este in fee simple of the premes comprised in the sd lease in reversion immediately expectant on the sd term: AND WHAS the sd A. has agrd with the sd B. to demise to him the within mentd premes for the further term of —— yrs, to commence on the —— day of ——, *i.e.*, *the expiron of existg term*, at the rent & subjt to the covts & provons hrinar reserved & expressed: NOW THIS DEED WITNESSETH that in conson of the rent hrinar reserved, & the covts by the sd B. hrinar contained, the sd A. hby demises unto the sd B., ALL the —— & premises comprised in & demised by the within written lease subjt to the like exceptions & reservons as are thrin contained; *Habendum*, p. 784, from the sd —— day of ——, subjt to & under the like rent & payable at the like times & in like mner as the rent reserved by the within written lease, & subjt to the like covts & agrmts on the pt of the lessee, & the like provon for re-entry in case of non-paymt of rent or breach of covt, or the happeng of any of the other events in the within written lease in that behalf mentd, & with the benefit of the like covts & agrmts on the pt of the lessor, & subjt to & with the like provons & condons in all respts as are in the within written lease contained, in like mner as if all such covts, agrmts, condons, & provons had been hrin repeated, with such modificons only as the differences in the names of the pties & in the term of the lease & other circes may require: AND THE sd A. hby covts with the sd B., & the sd B. hby covts with the sd A., that he, the sd respective covtg party, his exs, ads, or assns resply, will, durg the sd term of —— yrs, pform & observe all such covts, agrmts, & provons as afsd, wch on his or their respective pt are or ought to be pformed & observed: PROVD ALWAYS, & it is hby agrd that if the term of —— yrs grted by the within written lease shl be determined by virtue of the condon or provon for re-entry thrin contained, then these psnts shl become absolutely void. IN WITNESS, &c.

Agreement.

Witnesseth.

Demise.

Parcels.

Habendum.

Mutual covenant to perform covenants of lease.

Proviso for determination by re-entry.

1904, to which it has been held strict legal effect must be given: *Lord Llangattock* v. *Watney & Co.*, [1910] A. C. 394; *Knight* v. *City of London Brewery Co.*, [1912] 1 K. B. 10. A reversionary lease executed since 1925 and limiting a term to take effect more than twenty-one years from the date of the lease is void, and a contract to grant such a lease is also void: L. P. Act, 1925, s. 149 (3), overruling *Mann* v. *Land Registry*, [1918] 1 Ch. 202.

XXI.

LEASE *extending the term and operating as a surrender of an existing* LEASE.

PARTIES, as in Prec. VIII., p. 860. WHAS by a lease (hrinar called the sd lease) dated, &c., & made, &c., the premes hby demised were demised to the lessee [the sd X] for the term of —— yrs from the —— day of —— subjt to the paymt of the rent of £ —— thereby reserved & to the covts by the lessee & the condons thrin reserved & contained [*Devolution of title (if any) to the lessee*, p. 453]: AND WHAS the lessor is the este owner in respt of the fee simple of the premes hby demised subjt to the sd lease: AND WHAS it has been agrd betn the pties hto that the lessor shd grt to the lessee such new lease as is hrinar contained to the intent that the term grted by the sd lease shd be surrendered: *Testatum as in Prec.* VIII., p. 860. *Habendum* "for a term of —— yrs from *the last rent day*" paying, &c., *see* p. 784, until the —— day of ——, *i.e., the last day of the current lease*, the yrly rent of £ ——, & after the sd —— day of —— & durg the residue of the term hby grted the yrly rent of £ ——, such respective rents to be pd witht any deduction except for landlord's ppty tax [& tithe rent-charge] by eql qtrly paymts in every yr, the first qtrly paymt of the sd rent of £ —— to be made on the —— day of ——, *the next rent day*, & to be taken in satisfon of the apportioned pt of the rent reserved by the sd lease up to the date of these psnts, & the first qtrly payment of the sd rent of £ —— to be made on the —— day of ——, i.e., *the first rent day after the expiron of the current lease: Mutual covts to perform the covts in the lease*, p. 1019, *saying*, "in the same mner as if the same covts & provons had been hrin repeated with such modificons only as the difference [in the names of pties &] in the rents reserved & in the terms of the lease & other circes may require" (*a*): *Proviso for re-entry*, p. 817. IN WITNESS, &c.

Recitals.

Witnesseth.

(*a*) If so agreed the covenants may be to perform and observe the covenants of the said lease "during the term of —— yrs," *i.e.*, the residue of the term granted by the said lease, and other covenants may be entered into for the residue of the term granted by the new lease.

XXII.

RELEASE *by* LESSORS *of* BREACH *of* COVENANT (*b*).

PARTIES, A. & B., *lessors* (hrinar called the lessors), 1; C. & D., *lessees* (hrinar called the lessees), 2. *Recite lease, referrg to covt broken.* AND WHAS the premes comprised in the sd lease are now vested in the lessees: AND WHAS it has recently been discovered that by some inadvertence or neglect on the pt of the lessees a breach of the covt contained in the sd lease for, &c., has been committed whereby a right of action & also of re-entry has or may have arisen to the lessors: AND WHAS the lessors have agrd to execute the release hrinar contained, subjt nevertheless to the proviso hrinar contained. NOW THIS DEED WITNESSETH, that in psuance of the sd agrmt the lessors do hby release & waive all right & title of action, re-entry & forfeiture, claims & demands whatsr wch they the lessors, or either of them, now have, or has or might have against the lessees or any pson or psons claimg under or by virtue of the sd lease for or by reason of any breach, non-pformce or non-observce htofore committed or suffered of the sd covt, or any other covt or agrmt on the pt of the lessees contained in the sd lease; And also do & each of them doth ratify & confirm the sd lease. PROVD ALWAYS that nothing hrinbfe contd shl prejudice or affect any of the rights or remedies of the lessors under the covts & condon of re-entry, & other condons & provons of the sd lease in respt of any future breach of any of the covts or agrmts on the pt of the lessees thrin contained. IN WITNESS, &c.

Recitals.

Witnesseth.

Release.

Proviso.

(*b*) Prior to the Law of Property Amendment Act, 1859, s. 1, a defeasance to revive the condition of re-entry would have been necessary: see *Dumpor's Case*, 1 Smith's L. C., 12th ed., 35 *et seq.* As to the question of waiver of the benefit of a covenant in a lease, see L. P. Act, 1925, s. 148. As to defeasances generally, see 3 Byth. & Jarm. 3rd ed., 681 *et seq.*

XXIII.

DEED *confirming a* FORFEITED LEASE *with a* MODIFICATION *in the* COVENANTS *and* CONDITION OF RE-ENTRY (*a*).

Parties. *PARTIES*, A. (hrinar called the lessor, wch expression, &c., *see* p. 778), 1; B. (hrinar called the lessee, wch expression, &c.), 2;

Recitals. *Recite lease from A. to B., containg a covt by the lessee to insure & rebuild: That premes were uninsured, & destruction of*

Breach of covenant. *bldg by fire, & that it had not been rebuilt:* AND WHAS the lessor is advised that a breach of the sd covts for the insce & rebldg of the sd messe has occurred, in respt whrof he is entitled to recover damages under such respective covts, & to enforce

Agreement. the power of re-entry contained in the sd lease: AND WHAS an arrangemt has been come to betn the lessor & lessee that, in conson of the sum of £—— to be pd by the lessee to the lessor, the lessee shl be discharged from all liability to rebuild the sd messe, & that the sd lease shl be confirmed with such

Witnesseth. modificons as are hrinar expressed: NOW THIS DEED WITNESSETH that in psuance of such arrangemt, & in conson of the premes & of the sum of £—— now pd by the lessee to

Confirmation. the lessor, *receipt*, the lessor hby confirms unto the lessee,

Parcels. ALL & SINGR the premes comprised in & demised by the sd

Habendum to lessee. lease: To HOLD the same UNTO the lessee, for the residue of the sd term of —— yrs, or other the term & intt now vested in him, discharged from all liability to rebuild the sd messe, but subjt to the sd yrly rent of £——, & to the covts & agrmts on the pt of the lessee & condons contained in the sd lease, save & except the covts for the insce, repair, & maintce of the sd premes, & the condon of re-entry on breach of such respective covts, so far as relates to the insce & rebldg of the sd messe: *Covt by lessor for quiet enjoymt by lessee on paymt of rent & performce of covts of lease*, " as hby modified."

Release by lessor. AND THE lessor hby releases the lessee from the sd covts for the insce & rebldg of the sd messe, & from all rights of

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Mode of confirming leases. (*a*) See note to last Precedent. If the confirming party has only an equitable right to impeach the lease, and no legal estate, a mere confirmation without a formal demise would probably suffice. As to the confirmation of leases granted in intended exercise of a power, see L. P. Act, 1925, s. 152; and as to limited owners, see S. L. Act, 1925, s. 43 (ii.).

action, claims, & demands, wch the lessor now has in respt of any past or existg breach of such covts, but so that the covts, & proviso or condon of re-entry for breach of covt, contained in the sd lease, shl in all other respects remain in full force, & unaffected by these psnts. IN WITNESS, &c.

XXIV.

AGREEMENT SUPPLEMENTAL *to a* BUILDING AGREEMENT, *by which the* LESSOR *purchases* IMPROVED GROUND RENTS *before the leases are granted* (*b*).

AN AGRMT made the —— day of ——, betn A., of, &c. (hrinar called the lessor), 1, & B., of, &c., *builder* (hrinar called the lessee), 2, suppl to an agrmt (hrinar referred to as the bldg agrmt), dated, &c., & made betn the same pties as are pties hto. WHAS it has been agrd that in conson of the immediate paymt by the lessor to the lessee of the sum of £——, the sum of £—— p.a. shl be added to the total amt of the ground rents payable under the sd bldg agrmt in mner hrinar expressed, & that the terms of the same agrmt shl be orwise varied as hrinar provd: NOW IT IS HBY AGRD as follows:— Parties. Recitals.

1. IN CONSON of the sum of £—— pd by the lessor to the lessee upon the signature of this agrmt (the receipt, &c.) the total rents to be payable by the lessee or his nominees in respt of the land, houses, & premes comprised in the bldg agrmt shl, as from the —— day of ——, be increased by the sum of £—— p.a., makg the total aggregate yrly rent so payable (inclusive of the rents reserved by the leases for the time being actually grted) as follows (that is to say), from the —— day of ——, to Agreement for purchase of increased ground rents.

(*b*) As to making an agreement supplemental, see *ante*, p. 3, note. An agreement of this kind has hitherto (it is believed) been treated in practice as requiring only a 6*d*. agreement stamp; but a question has been raised as to whether it does not require an *ad valorem* conveyance stamp on the sum paid by the lessor for the purchase of the improved ground rents, either as a transfer on sale under s. 60 of the Stamp Act, 1891, or as a contract for sale under s. 59 of the Act. It would seem, however, to be a mere modification of the original agreement, and if read into that agreement it amounts merely to a reservation to the lessor out of his own property, so as not to subject it to any extra stamp duty. Stamp.

Notice of the agreement should be endorsed on the original agreement.

the —— day of ——, the yrly rent or sum of £——, &c., & from the —— day of ——, durg the remr of the term of 99 yrs mentd in the bldg agrmt, the yrly rent or sum of £——, the sd increased rents to be reserved & made payable at the like times & in like mner as provd by the bldg agrmt with respt to the rents thereby made payable.

Mode of payment.

2. THE INCREASED rents to be payable in respt of the leases remaing to be grted shl be apportioned betn such leases in such mner as shl be approved by the lessor or his surveyor, who shl also (if deemed material) determine what proportion of the rent reserved on each lease, shl be deemed pt of the sd addonal rent of £——.

As to leasing part of land at a nominal rent.

3. THE PROVONS of the bldg agrmt whereby it was provd that when the whole of the ultimate aggregate rent thereby reserved shd have been secd, the lessee shd be entitled to a lease or leases of the land remaing undemised togr with any house or houses erected thron, at the rent of £——, shl take effect & be applicable when & so soon as the whole of the sd increased ultimate rent of £—— shl have been secd by leases actually grted & not bfe.

Sum paid to lessee to be a charge (*a*).

[4. THE SD sum of £—— pd by the lessor to the lessee as afsd shl until the sd total ultimate yrly rent of £—— shl have been secd to the lessor by leases actually grted, be deemed to be in the nature of a loan to the lessee, & shl be a charge on the intt of the lessee, under the bldg agrmt as hby modified.]

Building agreement otherwise to remain in force.

5. EXCEPT so far as the same is hby modified, & subjt to the modificons hby made, the bldg agrmt shl remain in full force, & shl be treated as incorporated with this agrmt so as to operate in like mner as far as may be as if the sd increased rents had been origlly reserved thereby.

Declaration against incumbrances.

6. AND THE lessee hby declares that he has not done or suffered or been party to anything whereby his intt under the bldg agrmt is or can be in any way incumbered, or whereby he is prevented from enterg into this psnt agrmt, or from givg a good discharge for the sd sum of £——.

IN WITNESS, &c.

(*a*) *Qu :* whether this clause would not make the agreement chargeable with a mortgage stamp.

XXV.

DEED ALTERING *the* COVENANTS *of a* MINING LEASE, *and giving* NEW POWERS *to the* LESSEE, *by endorsement.*

PARTIES, the within named A., *lessor* (hrinar, &c., *see* p. 983), 1; the within named B., *lessee* (hrinar, &c., *see* p. 983), 2. *Mutual Covts.*, p. 713. Parties.

1. THE LESSEE shl forthwith open & commence workg the —— vein on the lands demised by the within written lease, & shl continue diligently to work the same. Additional covenant by lessee.

2. NOTWG THE provons within contained it shl be lawful for the lessee, so long as he shl diligently work the within mentd —— vein to deposit on the lands demised by the within written lease all spoil or rubbish wch may be dug or raised from or wrought on any pt of the sd lands, or on or from any other adjoing mines, quarries, or works of the lessee. Additional power to lessee.

3. THE within-written lease, & the covts, condons, & provons thrin contained, shl henceforth operate & have effect as if the covts, powers, & provons hrin contained had been embodied thrin, & shl be altered & modified accordgly, but shl in all other respects remain in force & unaffected by these psnts. Lease to have effect subject to variations.

IN WITNESS, &c.

XXVI.

SURRENDER (*b*) *of* TERM *under a* LEASE *to the* REVERSIONER *in* FEE *or for* YEARS. VARIATION *where the lease is* RENEWABLE *under the* LESSOR'S COVENANT.

PARTIES, A., *termor*, 1; B., *reversioner*, 2. *Recite lease* [*includg covt for renewal*], p. 451; *& devolution of term to A.*, Recitals.

(*b*) When the surrender is made with a view to the granting of a new lease of the same property to the same lessee, a formal surrender may generally be dispensed with, as the acceptance of a new lease which is inconsistent with the existing lease operates as a surrender by operation of law: *Ive's Case*, 5 Co. Rep. 11*a*; *Davison* v. *Stanley*, 4 Burr. 2210; *Lyon* v. *Reed*, 13 M. & W. 285; *Fenner* v. *Blake*, [1900] 1 Q. B. 426; see also notes to *Thursby* v. *Plant*, 1 Wms. Saunders, 235; *Glynn* v. *Coghlan*, [1918] 1 Ir. R. 482; 37 Sol. J. 539; and sub-s. 2 (*c*) of the L. P. Act, 1925, s. 52, Surrender of leases.

Agreement.

p. 453, *& of reversion to B.:* And whas the sd A. has agrd with the sd B. for the surr to him of the sd premes comprised in the recited lease for all the residue now unexpired of the

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excepting surrenders by operation of law from the provisions of that section. It has even been held that the grant, with the consent of the lessee, of a new lease to a stranger operates as a surrender: *Davison* v. *Gent*, 1 H. & N. 744; but the mere oral assent of the old tenant is not sufficient unless he gives up possession at or about the time of the grant of the new lease: *Wallis* v. *Hands*, [1893] 2 Ch. 75; see further 37 Sol. J. 539; nor does the rule as to implied surrender of an old by a new lease apply when the new lease is void or voidable: *Easton* v. *Penny*, 67 L. T. 290; *Canterbury Corpn.* v. *Cooper*, 100 L. T. 597. The acceptance of a surrender by a lessor in the mistaken belief that the lessee was in fact entitled to terminate his tenancy determines the lease but does not preclude the lessor from suing for damages for breach of contract: *Gray* v. *Owen*, [1910] 1 K. B. 622.

Power of tenant for life to accept surrender.

As to the power of a tenant for life to accept the surrender of leases and of contracts for leases, and to grant new leases, see S. L. Act, 1925, ss. 52, 90 (1) (iv.). Upon the grant of a new lease, the value of the surrendered lease may be taken into account in fixing the rent and the amount of any fine taken. Any money, other than rent, received by the tenant for life on the exercise of his powers under s. 52, is to be capital money arising under the Act, unless the Court otherwise directs: cf. *Re Penrhyn*, [1922] 1 Ch. 500. The powers of management during minority conferred by s. 102 include (sub-s. 2 (*g*)) power to accept surrenders of leases and tenancies.

Power of mortgagor and mortgagee in possession to accept surrender.

For the purpose only of enabling an authorised lease to be granted, a mortgagor while in possession and until a receiver is appointed, and a mortgagee while in possession or after a receiver has been appointed, have power, by virtue of s. 100 of the L. P. Act, 1925, to accept the surrender of a lease of the mortgaged property subject to restrictions very similar to those relating to the grant of leases by mortgagor and mortgagee respectively conferred by s. 99: see *Robbins* v. *Whyte* [1906], 1 K. B. 125. The value of the surrendered lease may be taken into account in fixing the rent of the new lease (sub-s. 3), and no consideration for the surrender, other than the granting of a new lease, must be taken by the person accepting the surrender without the consent of the incumbrancers interested. As in the case of leasing powers, so in the case of the power to surrender, additional powers, operating as though conferred by the Act, may be conferred by agreement in writing between the mortgagor and mortgagee (sub-s. 10); but such additional powers will not prejudicially affect the rights of any other mortgagee under a mortgage subsisting at the date of the agreement, unless such mortgagee joins in or adopts the agreement.

The rent should be paid up to the surrender. Under the old law, if the lease contained a covenant to pay, the action for rent accrued due before the surrender was not affected: *Att.-Gen.* v. *Cox*, 3 H. L. Cas. 240; but rent not actually accrued due was lost: *Grimman* v. *Legge*, 8 B. & C. 324; but this is altered by the Apportionment Act, 1870, which apportions rights as well as liabilities: see *Swansea Bank* v. *Thomas*, 4 Ex. D. 94; *Re South Kensington Co-operative Stores*, 17 Ch. D. 161; *Re Howell*, [1895] 1 Q. B. 844; *Bishop of Rochester* v. *Le Fanu*, [1906] 2 Ch. 513. A surrender

sd term thereby grted, in conson of the sum of £—— to be pd by the sd B. to the sd A.: NOW THIS DEED WITNESSETH that in psuance, &c., *conson*, *receipt*, the sd A., **as benefl owner** (*a*), hby surrs & assns unto the sd B., ALL & SINGR the premes comprised in or demised by the recited lease To THE intent that the sd term of —— yrs grted by the sd lease may merge & be absolutely extinguished in the freehd *or* "leasehold" reversion of him the sd B. in the sd premes: [AND THIS DEED ALSO WITNESSETH, that in further psuance of the sd agrmt, & for the conson afsd, the sd A. hby releases & discharges the sd B., [& his successors in title] from the hrinbfe recited covt in & by the sd lease made & entered into as afsd for the renewal of the sd lease, & from all actions, proceedings, claims, & demands under the sd covt, or any other covt or provon in the sd lease contained.] IN WITNESS, &c.

Witnesseth.

Surrender.

Term to merge.

Release of lessors' covenant to renew.

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does not operate to release the tenant from liability for past breaches of covenant: *Richmond* v. *Smith*, [1926] W. N. 211.

Registered land.

The registrar will, on proof of the determination of a lease of registered land, notify such determination on the register; see L. R. Act, 1925, s. 46; and L. R. Rules, 200—209.

Right of underlessee.

The surrender of a lease does not affect the rights of under-lessees, whether it is made with a view to a renewal (L. P. Act, 1925, s. 150) or otherwise (L. P. Act, 1925, s. 139), see *Mellor* v. *Watkins*, L. R. 9 Q. B. 400, and cf. *Walter* v. *Yalden*, [1902] 2 K. B. at p. 310.

If a lessee surrenders his lease after giving his undertenant notice to quit, on the notice to quit expiring the head lessor, or, if he has parted with the immediate right to possession to another person, the person having the immediate right to possession, is entitled to sue for possession: *Plummer* v. *David*, [1920] 1 K. B. 326.

Recitals in a surrender of a lease would often be unnecessary, and it may generally be conveniently made by endorsement.

Fixtures.

The surrender by operation of law of a lease appears to vest the tenant's fixtures in the lessor: *Leschallas* v. *Woolf*, [1908] 1 Ch. 641; so that if it is intended that they should remain the property of the lessee, it will be proper to insert in the lease:

"And it is hby agrd that the lessee shl have such rights over [*here specify fixtures*] as if they had been annexed to the demised premes immedly after the execution of these psnts."

Possession of surrendered lease.

The lessor has no right to the possession of the lease either after a surrender by operation of law: see *Knight* v. *Williams*, [1901] 1 Ch. 256; or after the determination of the term by re-entry: *Elworthy* v. *Sandford*, 3 H. & C. 330; nor (if the lease contains covenants by him) after the expiration of the term: *Hall* v. *Ball*, 3 Man. & Gr. 242.

(*a*) This implies full covenants for title, see *ante*, p. 507, note. If A. is a trustee or mortgagee he will surrender "as tree" or "as mtgee," which will imply a covenant against incumbrances, see *ib.*

XXVII.

SURRENDER *of a* PORTION *of the* LAND (*a*) *comprised in a* FARMING LEASE *of* MORTGAGED FREEHOLDS, *and* ABATEMENT *of* RENT *in respect thereof* (*by endorsement on the lease*).

Parties. *PARTIES*, "the within named A.," *lessee*, 1; "the within named B.," *mtgor*, 2; C., *mtgee*, 3; WHAS the sd A. has, at

Recital of agreement. the request of the sd B., agrd to surr to the sd C., in whom the premes demised by the within written lease are now vested by way of mtge for a term of —— yrs in reversion immediately expectant on the term grted by the sd lease, such portions of the land & premes thrin comprised as are hrinar described & surrendered, upon being pd the sum of £—— wch the sd A. has agrd to accept in full satisfon of all claims whatsr wch as an outgoing tenant accordg to any of the provons contained in the sd lease or by the custom of the country, or the Agricultural Holdings Act, 1923, or orwise the sd A. has or could have or claim in respt of the sd premes hby surrendered. AND it has also been agrd that the rent of £—— p.a. reserved by the within written indre shl be abated as hrinar expressed.

Witnesseth. NOW THIS DEED WITNESSETH, that in psuance of the sd agrmt & in conson of the sum of £——, now pd by the sd B. to the sd A., *the receipt, &c.*, & of the abatemt hrinar made in the sd rent, the sd A. **as benefl owner** at the request of the sd

Surrender. B., hby surrs & assns unto the sd C., All those pieces of land, &c., formg pt of the lands & premes comprised in & demised

Term to merge. by the within written lease, To THE intent that the residue now unexpired of the term of —— yrs thereby grted may merge & be extinguished in the leasehold reversion of the sd premes hby surrendered, & that the same premes may be discharged

Provision for abatement of rent. from all the provons of the within written lease, AND it is hby agrd & declared that in conson of the surrender hrinbfe contd, & of the premes, the sd yrly rent of £—— reserved by the

(*a*) As to the effect of a surrender of part of the premises in a lease, see *ante*, p. 67, note. As no agreement has been entered into between the mortgagor and mortgagee for extending the statutory power of accepting a surrender, and as the surrender is not made with a view to the grant of a new lease, the mortgagee is a necessary party to and must execute the deed: see *ante*, p. 1026, note (*b*).

within written lease shl as from the —— day of ——, be abated or reduced by the sum of £—— p.a. (being at the rate of £—— per acre for the sd premes hby surrendered), & that accordgly, as from that date, the yrly rent of £—— shl be payable in respt of the pieces of land & premes remaing subjt to the within written lease at the like times & in like mner as the sd yrly rent of £—— is thereby made payable ; AND it is hby further agrd & declared that as from the sd —— day of ——, all the covts on the pt of the lessee, & the power or condon of re-entry, & the covts on the pt of the lessor, & all other powers, condons, & provons in the within written lease contained, shl remain in force with respect to the sd pieces of land & premes remaing subjt to such lease as far as the same covts, powers, condons, & provons resply may be applicable thereto, with such modificons as may be rendered necy by such reduction or abatement of the sd rent as afsd, & the other circes of the case. IN WITNESS, &c.

Covenants, &c., of lease to remain in force as to remaining premises.

XXVIII.

SURRENDER *by endorsement on a* LEASE *of* FREEHOLDS *where the* PROPERTY *is in* SETTLEMENT *and subject as to different* PARTS *to various* MORTGAGES (*b*).

PARTIES, A., *lessee*, 1 ; B., *tenant for life*, 2 ; *several sets of mtgees*, 3, 4, & 5 ; *Recite vestg deed showg that the ppty is vested in* B. *subjt to the lease & subjt as to different pts throf to various mtges upon the trusts of the settlemt thrin referred to.* AND WHAS it has been agrd that with a view to the grantg of a new lease of pt of the premes comprised in the within written lease the lessee shl make & execute such surrender as is hrinar contained. NOW THIS DEED WITNESSETH that in psuance, &c., & in conson of the premes & of the determinon hby made of the covts by the lessee in the within written lease contained, the lessee **as benefl owner** hby surrenders & yields up to the sevl other pties hto accordg to their respective estes & interests in reversion as hrinbfe appearing, ALL & SINGR the several pieces

Recitals.

Witnesseth.

Surrender.

(*b*) See as to the acceptances of surrenders by tenants for life and mortgagors respectively, *ante*, p. 1026, note.

of land & premes comprised in & demised by the within written lease or now held by the lessee thrunder, subjt to the sub-
Term to merge. tenancies created by the lessee, To THE intent that the residue now unexpired of the term of yrs subsistg under or by virtue of the within written lease in the sd respective premes hby surrendered, may merge & be extinguished in the reversion immedly expectant on the same term of yrs of & in the same premes resply, & that the within written lease & all the covts & provons thrin contained may be hby determined. IN WITNESS, &c.

XXIX.

SURRENDER *by* LESSEE *and his* MORTGAGEES *by endorsement on the* LEASE, *with a view to the granting of a* NEW LEASE *of* PART *of the* LAND.

Parties. *PARTIES*, "the within named A.," *lessee*, 1; B., C., & D., *mtgees*, 2; the within named E., *lessor*, 3: WHAS since the
Recitals as to alterations in premises. date of the within written lease certain bldgs fences, & other erections have been built & set up on the sd piece of ground thereby demised & other alterons & addons have been made
Witnesseth. by the sd A. in & to the sd premes, NOW THIS DEED WITNESSETH, that in conson of a new lease intended to be grted of a pt of the sd premes as hrinar mentd, the sd B.,
Surrender. C., & D., **as mtgees**, at the request of the sd A. hby surrender & assn. to the sd A., & the sd A. **as benefl owner** hby surrenders, & assns unto the sd E., All the sd piece of ground & other the premes mentd & comprised in the within written deed, togr with all the bldgs, erections, & addons since erected or set up thron or added thereto, To THE intent that the term of —— yrs grted by the sd lease may be merged & extinguished in the
New lease to be granted. freehd of the sd premes, & to the further intent that a new lease may be grted by the sd E. to the sd A. on a pt of the sd piece of ground & premes with the bldgs & erections thron. IN WITNESS, &c.

LICENCES AND WATER-RIGHTS (*a*).

I.

LICENCE *not under Seal by Lessors to* LESSEE *to* ASSIGN, UNDERLET, *or* MORTGAGE (*b*).

WE, the undersigned, being the psnt landlords of the ppty hrinar mentd, do hby consent to an assnmt, *or* "underlease," [by way of mtge] by A., of, &c., the psnt tenant of the sd ppty under the lease hrinar mentd, to B., of, &c., [for the term of —— yrs from ——, *or* "for the whole remaing term except the last day throf,"] of [*parcels shortly described,* "being pt of "], the ppty comprised in a lease dated, &c., & made, &c., & thereby demised to K., for the term of —— yrs, from ——, PROVD that this consent shl not authorise any further or other assnmt, [*or*, "underlettg or partg wholly or partially with the posson "] [or any underlettg by the underlessee (*c*)] of the sd premes or any pt throf, or prejudice or affect any of the

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(*a*) A licence, if under seal, is subject to a deed stamp of 10*s.*; but if under hand only is exempt, unless amounting to an agreement.

(*b*) A licence does not affect the lessor's right as to future breaches of covenant or destroy the power of re-entry, see the L. P. Act, 1925, s. 143 (replacing ss. 1 and 2 of the L. P. (Amendment) Act, 1859); a defeasance for reviving the condition of re-entry is therefore unnecessary, Elph. Introd., 7th ed., 310. A licence to underlet does not, unless so provided, preclude the underlessee from underletting: *Williamson* v. *Williamson*, L. R. 9 Ch. 729. As to licences to assign or underlet, see 5 Dav. Prec., 4th ed., 193, note. By the L. P. Act, 1925, s. 144, no fine is to be exacted from the lessee for a licence to assign, &c., unless otherwise provided by the lease; and see *ante*, p. 806, note: *West* v. *Gwynne*, [1911] 2 Ch. 1. Effect of licence to lessee.

(*c*) See *Re Spark*, [1905] 1 Ch. 456.

Leasehold land held under a lease containing a prohibition against alienation without licence is not registrable under the L. R. Act, 1925, unless provision is made in the prescribed manner for preventing alienation without such licence, by entry on the register of a restriction to that effect, or otherwise: see L. R. Act, 1925, s. 8 (2). Registered land.

covts, condons, or provons in the sd lease contained, except to the extent hrinbfe expressed. As witness our hand this —— day of ——.

Signed by the Lessors.

WITNESS,

II.

LICENCE *under* SEAL *by* LESSORS *to* LESSEE *to make* ALTERATIONS *in* BUILDINGS. VARIATION *where the* CONSIDERATION *is* ADDITIONAL RENT (*a*).

Parties. THIS LICENCE, &c., *parties;* A., B., & C., *reversioners* (hrinar called the landlords), 1; D., *lessee* (hrinar called the lessee), 2. *Recite lease to K.*, "& in the sd lease is contained

Recitals. Lease containing covenant not to alter buildings. a covt on the pt of the sd K., not to erect any bldg nor increase the height of any erection, or bldg in the yard or garden of the sd demised premes, nor cut, injure, or alter any of the ppal walls or timbers of, nor make any alteron in the thereby demised premes witht havg first obtained the licence & consent in writg of the lessors; AND WHAS the sd premes have become vested

Present owners of lease, and reversion. in the lessee for the remr of the sd term of —— yrs, subjt to the rents & covts of the sd lease; AND WHAS the landlords are entitled to the fee simple of the sd premes subjt to the sd term; AND WHAS the landlords have agrd with the lessee to grant to

Application by lessee for licence to make alterations in buildings. him licence to open a doorway in the party wall at the rear of the sd premes demised by the sd lease, & to form a communicon betn the same & the adjoing messe now in his occupon, & to make & execute certain other works & alterons in the sd demised premes accordg to the plan annexed hto & the description & specificon contained in the schdle hto in conson of the [rent &] covts by the lessee hrinar grted & contained: NOW

Witnesseth. THIS DEED WITNESSETH as follows:—

Grant of licence to make specified alterations. **1.** IN CONSON of the [rent &] covts by the lessee hrinar [grted &] contained the landlords hby grt unto the lessee full licence & permission to make the sd doorway in & through the party wall of the sd demised premes, & to form a communicon betn the same & the sd messe now in the occupon of the lessee,

(*a*) See notes to last Precedent.

& also to make & execute the other works & alterons hrinbfe referred to, & wch are parlarly delineated & described in the sd plan & specificon, provd the same be done within the period of three clr months from the date hrof, & under the superintendence & to the satisfon of the surveyor for the time being of the landlords, their hrs or assns.

[**2.** It is hby agrd that the licence hby grted is intended to be subjt to such rights as any pson or corporon (other than the landlords) may have to enforce the observce or performce of any covt contained in the sd lease (*b*).]

Covenants by lessee.

3. In conson of the licence hrinbfe given, the lessee hby covts with the landlords, THAT the lessee [will durg the unexpired residue of the sd term of —— yrs pay unto the landlords the yrly rent of £ —— by equal half-yrly paymts on the —— day of —— & the —— day of —— in every yr, & will make the first of such paymts on the —— day of —— next, such rent of £—— to be in addition to the rent of £—— reserved by the sd lease & to be charged upon the premes comprised thrin &] will, within the period of three calr months from the date hrof, make the sd doorway & communicon, & execute the other works & alterons afsd in a good & substantial mner with pper materials under the superintendence & to the satisfon of the surveyor for the time being of the landlords, AND WILL bfe makg such alterons, communicate the parlars throf to the directors of the —— Insce Co, in wch office the sd demised premes are insured against fire, & obtain the consent of the sd Co to the sd alterons, AND THAT when such doorway & communicon & other works & alterons shl have been completed, all the restrictive & other covts on the pt of the sd K., & provons contained in the sd lease shl be applicable to the sd thereby demised premes in their then altered state in the same mner & as fully & extensively as if such premes had continued in the same state as the same are at psnt, AND THAT the lessee will, at the end or other sooner determinon of the hrinbfe recited lease or if & as soon as the licence hby given shl become void or voidable, at the costs of the lessee, well & substantially brick up the opening made in the sd party wall & restore the same in such mner as the landlords shl direct, & to their complete satisfon.

To make specified alterations within a certain time.

To obtain sanction of insurance office to alterations.

Covenants of lease to apply to the buildings as altered.

To restore party-wall to original state.

(*b*) This clause may be inserted where the property forms part of a building estate.

[4. The lessee **as benefl owner** hby charges the premes comprised in & demised by the sd lease with the paymt to the landlords of the sd rent of £—— in the mner & on the days mentd in the covt hrinbfe contd.**]**

[5. Provided always & it is hby declared that the licence hrinbfe contd shl not authorise the lessee to commit or suffer any breach of the covts contained in the sd lease (except so far as the same is hby expressly authorised) & further that if any half-yrly paymt of the addonal rent of £—— shl at any time be unpaid for the period of 14 days after the day on wch the same is hby made payable, then the licence hrinbfe contd shl become absolutely void (*a*).**]**

6. In this deed where the context so requires or admits, the expression "landlords" shl include the este owner or este owners for the time being of the reversion of the premes demised by the sd lease immediately expectant on the term hby grted; and the expression lessee shl include his exors, admors, & assns.

In witness, &c.

III.

LICENCE, *under* Seal, *by* Lessor *to* Lessee *to* Continue Alterations *made in* Buildings *in* Breach *of the* Covenants *of the* Lease (*b*).

Recitals. Lease. *Parties*, A., *lessor* (hrinar called the landlord), 1; B., *lessee* (hrinar called the tenant), 2: *Recite lease to K., & that lease*

(*a*) To be inserted where the licence is given for a continuing breach, as, for instance, licence to carry on a trade. If the reversion is conveyed after the licence is granted, the additional rent, which is not incident to the reversion, must be assigned: see *Hoby* v. *Roebuck*, 7 Taunt. 157; *Donellan* v. *Read*, 3 B. & Ad. 899; *Lambert* v. *Norris*, 2 M. & W. 333.

Stamp. The stamp appears to be 10*s.* and an *ad valorem* lease stamp in respect of of the new rent: Stamp Act, 1891, s. 77 (5).

As to waiver of right of re-entry. (*b*) See notes to Precedent I., *ante*, p. 1031. Probably this need not be under seal. By the L. P. Act, 1925, s. 148, a waiver by a lessor of the benefit of any covenant or condition in a lease is not to be deemed to extend to any breach of covenant or condition save that to which such waiver specially relates; and by s. 146 (3) a waiver of the right of re-entry for breach of covenant is not to affect the lessor's right to recover expenses incurred in reference to the breach.

is vested in B., & reversion in A., as in last form: And whas the tenant has recently made alterons in the sd premes, *specify nature of alterations:* And whas the alterons so made by the tenant in the sd premes, are considered to be wholly or to some extent an infringemt of, or unauthorised by, the covts & provons in the sd lease contained: And whas the landlord has agrd in conson of the paymt to him by the tenant of the sum of £——, to waive his rights in respt of any breach of the covts of the sd lease so committed by the tenant, & to grt to him such licence to continue such alterons, or orwise, as is hrinar contained, subjt as hrinar mentd: NOW THIS DEED WITNESSETH that in psuance of the sd agrmt & in conson of the sum of £—— now pd by the tenant to the landlord, *receipt*, the landlord doth hby (so far as he is affected by or concerned in the same) give & grt unto the tenant, his exs, ads, & assns, full liberty & licence to continue & maintain durg the residue of the sd term of —— yrs the sevl alterons made by him in the sd demised premes as hrinbfe mentd: And doth hby waive & release all claim to damage or right of re-entry upon the sd demised premes, & other rights wch may have accrued to him, the landlord, by reason of any breach of any of the covts or condons of the sd lease committed by the tenant in respt of any of the alterons or matters hrinbfe mentd. Provd always & it is hby agrd & declared, that the licence & waiver hrinbfe contd shl extend only to the specific alterons & matters hrinbfe expressly mentd, & shl not be deemed to authorise any further or other alterons in the sd premes, or to operate as a waiver or release of the covts or condons of the sd lease further or orwise, And that the sd lease & the covts on the pt of the lessee thrin contained for keepg the sd premes in repair & restrictive of the right to make alterons thrin, & all other the covts & condons thrin contained, shl henceforth be construed & operate & take effect in all respects in like mner as if the alterons afsd had been made in the sd demised premes previously to the date of the sd lease. In witness, &c.

That lessee has made alterations in breach of covenants.

Agreement by lessor to grant licence for alterations.

Witnesseth.

Lessor grants licence,

and waives damages and re-entry in respect of alterations.

Proviso that licence shall apply only to specific alterations.

That lease shall extend to alterations.

IV.

LICENCE *by* TENANT *for* LIFE (*a*) *to* LESSEE *to keep a* PUBLIC-HOUSE *in* CONSIDERATION *of* LESSEE *being* RESTRICTED *from* ASSIGNING, *&c., without* LICENCE, *and* DEFEASANCE *extending* CONDITION *of re-entry* (ENDORSED *on the* LEASE *and* COUNTERPART).

Parties. *PARTIES*, A., *tenant for life* (hrinar called the landlord, wch expression shl be deemed to include his succors in title where the context so admits), 1; B. (hrinar called the lessee, wch expression shl be deemed to include his exs, ads, & assns, where

Recital. the context so admits), 2. WHAS the lessee has applied to the

Agreement. landlord for his licence to him, the lessee, to carry on the business of a licensed victualler or publican on the premes, comprised in & demised by the within written lease, wch licence the landlord has agrd to give to him for a term of —— yrs as hrinar mentd on condon that the lessee shl henceforth be restricted from assng or underlettg the sd demised premes

Witnesseth. witht licence in mner hrinar expressed: NOW THIS DEED WITNESSETH that in conson of the covt & grt on the pt of the lessee & provons hrinar contained, & of the premes, the

Licence. landlord doth hby give & grt unto the lessee full licence & permission to use the premes comprised in & demised by the within written lease for the pposes of the business of a licensed victualler (*b*) or publican for a term of —— yrs from the date of

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Power of tenant for life to give licence and consents. (*a*) The S. L. Act, 1925, s. 59, confers upon a tenant for life power, either with or without consideration in money or otherwise, to vary, release, waive, or modify, either absolutely or otherwise, the terms of any lease of settled land in respect of the whole or any part of the land comprised in the lease, provided that the lease as thus modified would be such as might have been granted on a surrender thereof; and to give his licence or consent to the use of the settled land in any manner and to such other matters relating thereto for which such licence or consent is by covenant, enuring for the benefit of the settled land, required. By s. 61 (2) (*d*) of the Act, the expression "consideration in money or otherwise" includes the benefit of any restrictive covenant or condition.

(*b*) As to new licences, see the Licensing C. Act, 1910, s. 14. Conditions may be attached to the grant of a licence: see *Groh* v. *Hesketh*, [1908] 1 K. B. 654; but not to the making of an order for its removal: *R.* v. *Drinkwater*, [1905] 2 K. B. 469. Under s. 14 (2) of the Act licences for a term not exceeding seven years may be granted: see *R.* v. *Johnstone*, [1906] 1 K. B. 228.

these psnts, but so that the sd demised premes shl not after the expiron of such term be used for any such ppose witht a further licence for that ppose & so that in the event of any breach by the lessee of the covt against assning or underlettg witht licence hrinar contained, the licence hrinbfe contd shl thrupon cease & be forfeited: AND THIS DEED ALSO WITNESSETH that in conson of the licence hrinbfe contd & of the premes the lessee hby covts with the landlord, that the lessee will not at any time hrafter make any assnmt or underlease or pt with the posson of the sd demised premes or any pt throf witht the licence or consent in writg of the landlord first had & obtained, & hby further covts with & grts unto the landlord that the proviso or condon of re-entry by the within written lease given or reserved to the landlord in the event of the rent thereby reserved being in arrear as thereby mentd or in the event of any breach of any of the covts on the pt of the lessee thrin contained shl henceforth be enlarged & extended so as to operate & be exercisable henceforth in the same or the like mner as if the covt on the pt of the lessee hrinbfe contd against assning or underlettg witht licence as afsd had been contained in the within written lease to the intent that such proviso or condon of re-entry shl apply to the event of the breach of such last-mentd covt as well as the other events afsd, & to the intent that the within written lease & the demise thereby made shl henceforth be defeasible accordgly, PROVD always that nothing hrin contained shl in anywise prejudice or affect the sd proviso or condon of re-entry except by way of enlargemt or extension throf as afsd, AND the lessee hby further covts with the landlord that he the lessee hath not at any time done or been party or privy to anythg whereby the sd demised premes or his intt thrin, are, is, or may be, in any mner incumbered or affected or whereby he is prevented from enterg into or makg such covt, grt, or defeasce as is hrinbfe contd, AND the landlord hby covts with the lessee that he, payg the rent reserved by the within written lease & observg & pformg the covts & agrmts thrn & hrin contained, may, &c., *for quiet enjoyment*, p. 814. IN WITNESS, &c.

Covenant not to assign, &c.

Defeasance.

Proviso.

Covenant against incumbrances.

V.

LICENCE *by* Tenant *for* Life *to* Owner *in* Fee *of* Adjoining Land *to* Build *on and* Use *a* Plot *of* Ground *contrary to* Restrictive Covenants (*a*).

Parties. Recitals. Title of parties. Agreement. Witnesseth. Licence. Proviso.

Parties, A., *tenant for life*, 1; B., *owner in fee of adjoing land*, 2. *Recite convce by X., A.'s predecessor in title, to Y., B.'s predecessor in title, of land subjt to restrictive covts, setting out those which are to be modified:* And whas the sd A. is the este owner & tenant for life in posson of the Este, late of the sd X., adjoing the land comprised in the sd convce to the sd Y.: And whas by an indre, &c., the land comprised in the sd convce to the sd Y., was conveyed to & is now vested in the sd B. as este owner in respt of the fee simple throf: And whas the sd B. has requested the sd A. to permit the erection & maintce of bldgs, &c., &c., upon the plot of ground hrinar mentd formg pt of the last-mentd land, & the user of such plot & the bldgs thron as & for, &c., And whas the sd A. has consented to grt such licence on the condons & subjt to the restrictions hrinar contained: NOW THIS DEED WITNESSETH that in conson of the agrmt on the pt of the sd B. hrinar contained, the sd A. by virtue of the powers vested in him by the S. L. Act, 1925, as such tenant for life as afsd hby grts unto the sd B., & his successors in title, Full licence & permission to erect & for ever hrafter to maintain & continue upon the plot of ground situate, &c., containg, &c., delineated & edged red upon the plan drawn in the margin of these psnts, a messe & bldgs, &c., &c.: And also full licence & permission for ever hrafter to use the sd plot of ground & the messe & bldgs to be erected thron as afsd as & for, &c., *premes not to be used so as to cause nuisance, &c., see* pp. 367, 701, but for no other ppose whatsr, Upon condon nevertheless, &c., &c., Provd

As to release of restrictive covenants. Registered land.

(*a*) See S. L. Act, 1925, s. 59, and note (*a*) to last precedent. This precedent takes the form of a licence instead of a release, as it is subject to conditions. As to who can give a licence in the case of a building estate, see *Everett* v. *Remington*, [1892] 3 Ch. 148.

If the servient tenement is registered, and the covenants are entered in the charges register, or if the dominant tenement is registered and the covenants are entered in the property register, application must be made to the Registrar to alter the entries: see Rules 204, 212.

ALWAYS, &c., that except so far as the same is hby varied the sd indre of convce of, &c., & the restrictive covts & provons thrin contained shl remain in full force & effect. IN WITNESS, &c.

VI.

REVOCABLE GRANT *and* AGREEMENT *respecting the supply of* WATER *to a* HOUSE *from an adjoining* ESTATE (*b*).

PARTIES, A., 1; B., 2; *Recite titles of A. to the X. Este, & of B. to Y. House adjoing that Este;* AND WHAS the sd B. some time since, with the consent of the sd A., laid down pipes from the sd X. Este to Y. House afsd, for the ppose of conveying water from the sd Este to the sd house for domestic & garden pposes; AND WHAS the sd A. is willg to grt to the sd B. the right or privilege for him the sd B. & the owners & occupiers for the time being of Y. House, to take & convey water in mner & for the pposes afsd, upon condon that such right or privilege shl not be used to the prejudice of the owners of the X. Este, & shl be revocable at pleasure, as hrinar mentd, & shl be subjt to such other restrictions & stipulons as are hrinar expressed: NOW THIS DEED WITNESSETH that in conson of the premes, & for the other consons hrinar appearg, the sd A. to the intent that the liberty & licence hby grted may for the time being until revoked be annexed to Y. House afsd, hby grts unto the sd B., FULL & FREE liberty & licence at all times hrafter, until such liberty & licence shl be revoked under the provon in that behalf hrinar contained, to take & convey water by means of any pipes & tanks already laid down, or to be hrafter laid down for such ppose, from the sd X. Este for the use of Y. House afsd, & the gardens & grounds belongg thto, in as full & ample a mner as htofore, togr also with full liberty & licence for the sd B. or any pson or psons authorised by him, with workmen & others, from time to time hrafter,

Recitals.

That pipes have been laid down.

Consent of A. to grant right of taking water.

Witnesseth.

Grant.

Liberties.

(*b*) The right granted is an equitable easement within the L. P. Act, 1925, s. 205 (*x*), and is intended to prevent a legal easement by user from being acquired by prescription: see Prescription Act, 1832, s. 2, *ante*, p. 59, note.

until such liberty & licence shl be revoked to enter on the sd X. Este, or any pt throf, & to dig, search for, & examine the sd pipes & tanks, & to execute, effect & do all necy cleansgs & repairs thereto, or renewals throf, when & as often as occasion shl be or require, givg nevertheless to the sd A., or his successors in title to the said X. Este, and to his or their tenants for the time being, reasble notice, previous to such entry, of the object & ppose of the same, and makg to the sd A. or his successors in title & his or their tenants, full compenson for all damage wch may be done to his or their land, or the timber, trees, wood, or underwood, or growg crops thron, by reason of the exercise of any of the liberties & licences hrinbfe contd : AND YIELDG & PAYING unto the sd A., or his successors in title to the sd X. Este, the yrly paymt of twenty shillings for or in respt of the liberties, licences & privileges hby grted durg the continuce throf, the paymt of such yrly sum to be made on the —— day of —— in every yr, witht any deduction ; PROVD ALWAYS, that the liberties & licences hby grted shl not be used to the prejudice, injury, or inconvenience, of the owner or owners of the sd X. Este, or his or their tenants ; And that nothg hrin contained shl prevent the sd A. or his successors in title to the sd X. Este or his or their tenants of any pt throf, from divertg, diminishg, interfg with, or cuttg off the water by wch the sd tanks & pipes are or may for the time being be supplied & so that in such event neither the sd B. nor other the owner or owners, occupier or occupiers of Y. House afsd shl be entitled to any compenson for the damage occasd by the diminution or stoppage of such supply of water ; PROVD ALSO & IT IS HBY AGRD & DECLARED that the sd A. or his successors in title to the sd X. Este, shl have full power & authority at any time hrafter by givg three calr months' notice in writg to the sd B., or other, the owner or owners, or occupier or occupiers for the time being of Y. House afsd, or leavg such notice at Y. House, to revoke & make void the liberties, licences, & powers hby grted, in wch case the sd pipes & tanks shl be removed & the surface soil restored by the sd last-mentd pson or psons on reasble notice in that behalf being given to him or them, or in default throf such pipes & tanks shl become the ppty of the owner or owners for the time being of the sd X. Este. IN WITNESS, &c.

Reddendum.

Provisoes.

Power of revocation.

VII.

LEASE *of* LAND *with* WATER RIGHTS *to a firm of* BREWERS *who* COVENANT *to* SUPPLY WATER *to the* LESSOR.

THIS LEASE made, &c., BETN A. of, &c. (hrinar called the lessor, wch expression, &c.), of the one pt, & B. & C. of, &c., brewers at —— tradg as B. & Co. (hrinar called the lessees, wch expression, &c.), of the other pt, WITNESSETH as follows :— Parties. Witnesseth.

1. IN CONSON, &c., p. 780, f. **1**, the lessor hby demises unto the lessees, *parcels by reference to schdle & plan*, wch pieces of land are hrinar called the water area, with full power & authority for the lessees to bore for, take, use, & enjoy all the water on, under, or issuing from the sd pieces or parcels of land for the pposes of their business at —— & for the other pposes hrinar mentd, with power at any time or times durg the term hby grted for the pposes afsd to sink one or more wells in the water area, & also to lay down & construct on such levels & either upon, above or below the surface of the water area, as the lessees shl think pper, & maintain a main or mains, pipe or pipes, aqueduct or aqueducts, inlets, settlewells, filterg beds, & other similar works in or under the water area, & also to make & construct & to maintain & from time to time repair one or more reservoirs on the water area for the storage of the sd water, & also to build or make any engine houses & other works & appliances wch may be deemed necy or pper for the pposes of these psnts on the water area & to maintain the same, & also on the water area to erect, maintain, & remove any steam or hydraulic or electrical machines that may be necy or pper for the pposes of these psnts, *habendum*, p. 784, f. **2**, SUBJT to the tenancies & easemts now affectg any pt or pts throf, *reservon of fixed rent*, p. 1037; AND ALSO the royalties followg to be pd on the days afsd (that is to say) :—the sum of £—— for every —— gallons per day after the first —— gallons that shl be gotten by the lessees under the powers hrin contained, such quantities of —— & —— gons per day to be calculated on the average of the whole yr.

Parcels. Power to make wells. Lay pipes. Make reservoirs. Erect machinery. Habendum. Reservation of rent. Royalties.

2. *Trust for sale of demised premes, ante,* p. 1004, f. **3.**

3. *Interim powers of mortgaging & leasing, ante,* p. 1005, f. **3.**

Covenants by lessees.

4. *Covenants by lessees,* p. 788.

(i.) *To pay rents & royalties,* p. 964, f. **1.**

Pay rates and taxes

(ii.) *To pay rates & taxes,* p. 964, f. **2,** "upon the water area or in respt of the water got therefrom or in respt of the rents or royalties hby reserved or made payable, or in respt of any land entered upon or any bldg, erection, main, pipe, aqueduct, or work erected or made under or by virtue of these psnts, or on the owners or occupiers in respt throf, the landlords' ppty tax only excepted."

Keep in repair.

(iii.) *To keep in repair,* p. 968, f. **14,** "all the mains, pipes, aqueducts, filterg beds, reservoirs, water courses, engines, machinery, pumps, bldgs, sheds, workshops, erections, rlys, tramways, roads, & other works & conveniences made or erected by the lessees under the provons of these psnts whether in, on, or under the water area or used in connection therewith, or in or under any land not being pt of the water area, except any works or things wch may become unnecy."

Deliver up.

(iv.) *To deliver up,* p. 976, f. **50.**

Repair.

(v.) *To repair on notice,* p. 792, f. **11.**

(vi.) *Power to lessor to repair on default of lessees,* p. 968, f. **15.**

Fence.

(vii.) *To fence,* p. 969, f. **16,** *saying,* "well, pit, shaft, reservoir, filterg bed, & open pt of other work already sunk, dug, or made or wch hrafter shl be sunk, dug, or made by virtue of these psnts either within or witht the water area."

Place meter.

(viii.) And also will place at such places as may be necy & at all times durg the sd term maintain in good workg order & condon pper meters accordg to the pattern wch shl, for the time being, be considered the most accurate, & will cause to be measured thrin all water wch may be gotten by virtue of these psnts & all water wch may be supplied to —— Farm or to any houses or to the lessor under the provons hrin contd & will cause the quantities of water so ascertained to be duly registered.

Keep books.

(ix.) And will at the end of each day cause the total quantity of water measured as afsd to be entered in pper books of account at the Office of the lessees on the water area.

To keep accounts.

(x.) *To keep accounts,* p. 973, f. **37,** of "the amt of water gotten or supplied by the lessees by virtue of these psnts & the

day on wch it was so gotten or supplied," *to deliver accounts half-yrly*, of " the total amt of the water gotten or supplied by virtue of these psnts durg the precedg half-yr."

(xi.) *To keep plans*, p. 974, f. **39**, of " the works, mains, pipes, aqueducts, filterg beds, & reservoirs executed or made under these psnts either on the water area or elsewhere & all the workg throf." Keep plans.

(xii.) *To allow lessor to inspect accounts & plans*, p. 974, f. **40**. Allow lessor to inspect.

(xiii.) *Power to lessor to inspect*, p. 975, f. **43**, " the premes hby demised & the works, meters, &c., belongg thereto." Power to inspect.

(xiv.) *To make bridges, &c.*, p. 975, f. **44**.

(xv.) And also will at their own expense, if so required by the lessor, supply water pperly filtered for domestic & househd pposes (*a*) to every house standg at the date of these psnts on any of the land distinguished on the sd map by a —— colour (wch land is hrinar called the supply area), free of charge, & to every house wch may be erected on the supply area durg the sd term after the date of these psnts at the rate of —— per —— gallons. Covenant to supply water.

5. And it is hby agreed & declared that the lessees shl make & durg the term hby grted maintain in good order & repair pper mains for the supply of filtered water from their pumpg station to the sd reservoir or reservoirs at their own expense; & also will at their own expense lay down & maintain pper mains along the high roads for the supply of filtered water to the sd houses on the supply area accordg to the covts hrinbfe contd, & will at all times keep such mains fully charged with water at such pressure that it will rise through a supply pipe of —— bore to a height of —— feet above the sea level; Provd nevertheless that the lessor shl at his own expense lay down & maintain pper connections betn the sd mains & any houses now standg or at any time durg the term hby grted to be standg on the supply area. Agreement to make and maintain mains to reservoir for filtered water. Lay pipes to supply filtered water. Keep pipes charged. Lessor to make connections.

6. *Further covts by lessees*, p. 788.

(i.) *Not to assign or underlet*, p. 806, f. **47**.

(ii.) And will not sell or give away water got under these psnts from the premes hby demised to any pson or psons, or corporon, except to a pson or psons, or corporon who shl, for Not to sell water.

(*a*) As to increased user not contemplated by agreement, see *Hadham R. D. C.* v. *Crallen*, [1914] 2 Ch. 138.

the time being, carry on the business of brewers in the brewery & works now occupied by the lessees.

Pay compensation for injuries.

(iii.) And further that if the lessees shl, in the exercise of any powers, liberties, or authorities hby conferred on them, injure or damage any lands or any bldgs, erections, or crops thron, or the preparons for such crops, then & in every such case the lessees will pay to the tenants & occupiers of the land so occupied, used, or injured as afsd pper compenson for or in respt of such occupon, use, or injury, such compenson to be determined in case of difference by arbitron, & will indemnify the lessor from all actions, proceedings, claims, & demands on the pt of such tenants or occupiers or any other psons in respt of such occupon, use, or injury.

(iv.) *Not to place spoil banks near house*, p. 972, f. **28**.

Power for lessor to resume possession of part of land (*a*).

7. And it is hby agrd that the lessor may at any time or times on givg six calr months' notice in writg to the lessees resume posson of, & determine the lease of the lessees as to any portion or portions of the water area not being actually required for the works of the lessees wch the lessor may require for bldg pposes, & the sd rent of £—— shl be reduced at the rate of £—— per acre of the land of which posson shl be so resumed.

For lessee to remove engines.

8. *Power to remove engines*, p. 980, f. **6**, *saying*, "all fixed & movable engines, machinery, plant, mains, & pipes used or employed in or about the water area wch the lessor shl not have elected to pchase, &c."

Re-entry.

9. *Power of re-entry*, p. 978, f. **1**.

For lessor to purchase engines.

10. *Power to lessor to purchase engines, &c.*, p. 980, f. **7**, *saying*, "fixed or movable engines, machinery, plant, mains & pipes, & other articles & things used or employed in or about the carryg on & workg of the works hby authorised."

Covenant by lessor not to sink wells.

11. And the lessor hby covts with the lessees that no wells except for the ppose of supplyg with water isolated houses or farms on the supply area lying away from the main roads shl be made or sunk in the supply area.

For quiet enjoyment.

12. *Covenant for quiet enjoyment*, p. 977, f. **1**.

Arbitration.

13. *Arbitration clause*, p. 828, f. **17**, *& additional clause*, p. 982, f. **12**.

In witness, &c.

[*Schdle of Pcels.*]

(*a*) See *ante*, p. 936, note (*d*).

VIII.

DEMISE *of* RIGHTS *for* WATER SUPPLY *of an* URBAN DISTRICT COUNCIL (*b*).

PARTIES, A. & B. (hrinar called the lessors, wch expression shl be deemed to include the este owners or este owner from time to time of the lands of the lessors hrinar mentd), 1; the Urban District Council of ——, in the County of ——, (hrinar called the lessees, wch expression shl be deemed to include their succors & assns), 2. WITNESSETH that in conson of the rents & covts hrinar reserved & contained, & on the pt of the lessees to be pd, observed, & pformed, the lessors do hby grt & demise unto the lessees FULL POWER & AUTHORITY to & for the lessees to take, use, & enjoy all the water issuing or comg from the spring known as the ——, situate in the lands of the lessors in the Parish of ——, the site of wch spring is shown on the plan hto annexed & thron marked with the letter ——, And to convey the same water to any lands, tenemts, or hds within the Urban District of ——; AND FOR THAT PPOSE to lay down, construct, or make within —— calr months from the execution of these psnts, & on such

Parties.

Witnesseth.

Grant.

Power to take water from a spring.

To lay down a main.

(*b*) See Public Health Act, 1875, s. 51, and the interpretation of "lands" and "waterworks," in s. 4; as to the powers of Rural District Councils, see Public Health (Water) Act, 1878, and the Local Government Act, 1894, s. 25. As to the power of a landowner to contribute towards the expense incurred by a District Council in supplying water to his lands, see District Councils (Water Supply) Facilities Act, 1897. Where land is taken under the Water-works Clauses Act, 1847, the rights of the undertaking to support from the minerals are governed by that Act: *New Moss Colliery, Ltd.* v. *Manchester Corpn.*, [1908] A. C. 117; and see *ante*, p. 350, note.

Reference may here be made to the Precedent printed in the second edition of this work, Vol. II., p. 892, of a grant by a landowner (tenant for life) to an urban sanitary authority of the right of making a sewer and disposing of sewage under the Public Health Act, 1875. As to the support of sewers, see the Act of 1883, which incorporates the provisions of the Waterworks Clauses Acts, 1847 and 1863; as to mines, see the Dudley Sewage Act, 1879 (42 & 43 Vict. ch. c.), and the schedule thereto, the Nottingham Corporation Water Act, 1897, and the schedule thereto.

For London special legislation has been provided, see the Metropolis Water Act, 1902, and the Metropolitan Water Board (Various Powers) Act, 1907. As to the power of the Board to assign a lease without licence, see *Metropolitan Water Board* v. *Solomon*, [1908] 2 Ch. 214.

levels, & either upon, above, or below the surface of the lands as the lessees shl think pper, & to maintain a main or pipe or pipes, or aqueducts, inlets, settle wells, & other similar works in, under, or through the lands or grounds of the lessors in the respective parishes of —— & ——, in the County of ——, in the line distinguished by the colour —— on the sd plan hrunto annexed or as near to such line as circumstances will permit, & not in any case further from the sd line than —— feet on either side throf, AND ALSO full power within the sd period of —— calr months to make or construct, & durg the term hby grted to maintain a reservoir for the storage of the sd water, & any engines, machinery, & other works or appliances wch may be deemed necy or pper in connection therewith at the point marked —— on the sd plan; AND ALSO for the pposes afsd, & for the ppose of examing & repairg or relaying the sd reservoir or any pipes, mains, aqueducts, engines, machinery, or other works wch may be laid down or constructed by the lessees through, upon, or under the sd lands or grounds, or of laying down, constructg, or substitutg any new or other pipes, mains, aqueducts, engines, machinery, or works in lieu of any previously laid down, constructed, or made, full power for the lessees, their agents or workmen, either with or witht carts & horses, to enter upon the sd lands within the limits afsd; AND TO take posson of, use & occupy durg the term hby grted such portion or portions of the sd lands as may be necy for the pposes afsd, & genlly full power to pform any act or thing within or upon the sd lands or grounds for the pposes afsd or any of them wch the lessees shl think pper or expedient; PROVD ALWAYS, that not more than —— acres of land in the whole shl be taken posson of, used, or occupied by the lessees for the pposes afsd; TO HOLD the powers, authorities, & premes hby demised unto the lessees from the —— day of ——, for the term of —— yrs (*a*); *Reservon of rent*, p. 784; AND THE LESSEES hby covt with the lessors.

To construct and maintain a reservoir.

To repair, &c.

To take possession of necessary lands.

Limit to amount of land to be taken.

(i.) *To pay rent*, p. 788, f. **3**.

(ii.) *To pay rates, taxes, & outgoings*, p. 789, f. **4**.

Not to do damage.

(iii.) And further, that the lessees in the exercise of the

(*a*) The rights demised are legal interests created for a legal estate: see L. P. Act, 1925, ss. 1 (2) and 205 (1) (ix).

powers afsd, will do as little damage as may be to the sd lands, or the timber or other trees, underwood, crops, or vegeton thron.

To compensate tenants for damage.

(iv.) And will make & give to the tenants of the sd lands full compenson for any loss, damage, or inconvenice wch they resply shl or may incur or sustain by reason of any works or operons of the lessees under the powers afsd, such compenson, in case the pties do not agree, to be settled by arbitron, psuant to the arbitron clauses contained in the Public Health Act, 1875 (*b*), or any statutory modificon or re-enactmt throf for the time being in force, wch shl be deemed to apply in the same mner as if the same had been hrin incorporated with the necy modificons (if any).

To restore surface.

(v.) And also that the lessees, after makg any excavon or executg any of the works hrinbfe authorised, will at their own expse, as soon as conveniently may be, restore the surface of the ground to the same state as it was in bfe such excavation or other works, so far as such surface shl not be required for the pposes afsd.

As to soil, &c., excavated.

(vi.) And also will, at the option & to the satisfon of the lessors, or their agent for the time being, either carry away such portion of the soil, clay, stone, or other materials taken out in the laying down of the sd pipes, or the construction of the sd reservoir, & executg the other works afsd, as shl not have been employed for restorg the surface of the sd lands, or for the ppose of the sd works, or leave the same or any pt throf for the use of the lessors or their tenants.

To complete works in a certain time.

(vii.) And will complete the laying of the sd pipes, & the construction of the sd reservoir, & the execution of the other works hrinbfe mentd in all respects within the time hrinbfe appted in that behalf.

Not to interfere with drainage.

(viii.) And that in case durg the exercise of any of the afsd powers the lessees shl disturb or interfere with the drainage (whether natural or artificial) & whether surface or underground, of any lands of the lessors, or shl damage any drain-pipes or culverts in or under any such lands, the lessees will at their own expse make good all such damage, & restore such

(*b*) See the Public Health Act, 1875, ss. 22, 52, 179, 180, 329, 333, and the Public Health Acts Amendment Act, 1907, ss. 2, 10, which is an adoptive Act.

drainage, under the superintendence & to the satisfon of the lessors or their agent.

To supply water to houses on the estate.

(ix.) And further, that the lessees will from time to time durg the term hby grted, if & whenever thrunto required by the lessors, supply with a sufft quantity of water all houses, cottages, farm & other bldgs, & troughs & drinkg places for cattle now existg, or hrafter to be erected or placed upon the sd lands, or any pt throf, within a distance of —— yds from the line of the sd pipes, the lessors bearg & paying the costs & expses of laying down & keepg in repair all branch pipes & of executg & maintaing all works necy for connectg the sd houses, cottages, & farm or other bldgs, cattle-troughs, & drinkg places, with the sd main line of pipes, & also paying unto the lessees a water-rate or rent in respt of such water supply as last afsd, to be assessed on the same scale as the rate for the time being charged in respt of water supplied to houses & tenemts in the town of ——.

Power to lessors to determine grant in case of nonpayment of rent, &c.

Provd always & it is hby agrd that if the rent hby reserved shl be unpaid for the space of —— days after the same shl have become payable (whether lawfully demanded or not) or in case the lessees shl at any time make default in the pformce or observce of any of the covts or stipulons hrinbfe contained, & on their pt to be pformed & observed, & shl not make good such default, & also make full compenson to the lessors for all damage thereby sustained by them, within three calr months after receivg from the lessors a notice in writg, requirg them the lessees to make good such default, & to make such compenson for damage (if any), it shl be lawful for the lessors to take up & remove any pipes wch shl have been laid down under the powers afsd, & thrupon this grt & demise shl cease & determine.

Covenant for quiet enjoyment.

And the lessors hby covt with the lessees, that they, paying the rent hby reserved, & pformg & observg the covts & stipulons hrinbfe contd, & on their pt to be pformed & observed, may quietly have, use & enjoy the powers, authorities & premes hby demised at all times durg the sd term of —— yrs, witht any interruption by the lessors, or any pson or psons rightfully claimg any estate in the sd lands through or in trust for them or either of them. In witness, &c.

MISCELLANEOUS PRECEDENTS.

(Affecting the Legal Estate (*a*).)

I.

CONVEYANCE *in* Trust *for* Sale *of* Freeholds *by an* Estate Owner *to enable* Annuities (*b*) *to be* Over-reached (*c*).

THIS CONVEYANCE made, &c., betn A., *este owner*, 1;

(*a*) Under this heading will be found precedents of deeds and other instruments which in various circumstances may be required to set the title in order before a conveyance on sale can be made.

It should be observed that the provisions of the L. P. (Amendment) Act, 1926, except ss. 4 and 5, to some of the principal and minor amendments, of which reference is made in the following notes, are to be deemed to have come into operation on January 1st, 1926.

(*b*) See *ante*, p. 526.

(*c*) See *ante*, p. 433. A conveyance such as the above will sometimes be required in order to make title to the property in compliance with s. 42 of the L. P. Act, 1925, and will operate under s. 2 (2) of the same Act, as amended by the L. P. (Amendment) Act, 1926, to enable the trust corporation to sell free from the over-riding annuities. The effect of that sub-section, as amended, is that whenever the legal estate affected is subject to a trust for sale, then, if at the date of a conveyance made after the commencement of the Act under the trust for sale or the power conferred upon trustees for sale, the trustees (whether original or substituted) are either (*a*) two or more individuals approved or appointed by the Court or the successors in office of the individuals so approved or appointed, or (*b*) a trust corporation, any equitable interests or power having priority to the trust for sale, except such equitable interests and powers as by sub-s. 3 of the same section are excepted from the sub-section, will be over-reached by such conveyance so made.

An estate owner whose estate is subject to an annuity within the meaning of Part II. of the L. C. Act, 1925, or to a limited owner's charge or a general equitable charge within s. 10 (1), Class C., of that Act, but who has not the over-reaching powers of a tenant for life or a trust corporation holding in trust for sale, must, at the instance of an intending purchaser or mortgagee (see L. P. Act, 1925, s. 205 (xxi)), if he cannot obtain the concurrence of the equitable owner in a conveyance in trust for sale, either acquire the necessary over-reaching power for himself by executing a principal vesting deed declaring that the legal estate is vested in him in trust to give effect to all equitable interests and powers affecting the same (S. L. Act,

the —— Socy (hrinar called the Corporon) (*a*), *trustees for sale*, 2. WHAS the sd A. is the este owner in fee simple of the ppty hby assured for his own use & benefit absolutely subjt to the sevl life annuities or rentcharges specified in the first column of the Schde hrto wch were created or charged thron by the resptive instrumts mentd in the second column of the sd Schdle hrto & are payable to the sevl psons mentd in the third column of the same Schdle durg their resptive lives but free from all other incumbces. AND WHAS the sd A. is desirous of executg in favour of the Corporon such convce in trust for sale of the sd ppty as will enable the sd annuities or rentcharges though havg priority to the trust for sale to be over-reached by a convce made by the corporon under the trust for sale or the powers conferred on them: NOW THIS DEED made for effectuating such desires as afsd WITNESSETH as follows :—

1. THE SD A. as settlor hby grants unto the corporon : *parcels*, pp. 480, *et seq.* ; *habendum to the corporon in fee simple*. Subjt to the paymt of the annuities or rentcharges specified in the

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1925, s. 21), or by conveying the property to trustees approved or appointed by the Court or to a trust corporation in trust for sale invest such trustees or corporation with the necessary power.

Although in a case falling within s. 42 of the L. P. Act, 1925, the estate owner cannot force an intending purchaser or mortgagee to accept a title with the concurrence of the equitable owner, there is nothing to prevent him from joining with the equitable owner, if the latter is available and willing to concur, in executing a conveyance in trust for sale under which a good title in accordance with s. 42 may be made without resort to s. 2 (2), and without, therefore, incurring the expense incident to the appointment of a trust corporation or an application to the Court for the appointment or approval of trustees. Nor is there, of course, anything in the L. P. Act, 1925, to prevent an intending purchaser from accepting a conveyance with the concurrence of the equitable owner.

If the estate is subject to an equitable interest which is registered as a land charge but cannot be over-reached by means of a trust for sale, title must be made at the option of the purchaser by cancelling the registration or obtaining the concurrence in the conveyance of the person entitled to the equitable interest : L. P. Act, 1925, s. 43.

A mortgage by deposit of title deeds is not " a general equitable charge " within the meaning of s. 10, Class C. (iii), of the A. E. Act, 1925, and cannot be over-reached by means of a trust for sale : see L. P. Act, 1925, s. 13.

(*a*) See the definition of a trust corporation contained in the L. P. Act, 1925, s. 205 (xxviii), as extended by the L. P. (Amendment) Act, 1926 ; and see P. T. (Custodian Trustee) Rules, 1925, S. R. & O., 1925, No. 1269, L/47, [1926] W. N., pt. 2, p. 7.

Schdle hto, but Upon trust nevless that the corporon shl with the consent in writg of the sd A. durg his life & afterwards at their discron sell (*b*) & convey the ppty hby assured freed & discharged under the statutory power in that behalf from the sd annuities or rentcharges.

2. THE CORPORON shl stand possed of the net proceeds of such sale after paymt of the costs thof, AND ALSO of the net rents & profits until sale of the ppty hby assured after paymt of the costs of insurce, repairs, & current outgoings Upon such trusts & with & subjt to such powers & provons as may be requisite for giving effect to the rights of the sevl psons to whom the sd sevl annuities or rentcharges are resply payable as afsd, AND subjt thrto Upon trust for the sd A. absolutely. IN WITNESS, &c.

The Schdle hrinbfe referred to.

II.

CONVEYANCE *in* TRUST *for* SALE of FREEHOLDS *by an* ESTATE OWNER *with the concurrence of* PERSONS *entitled to a* GENERAL EQUITABLE CHARGE (*c*).

PARTIES, A., *estate owner*, 1; B., 2; C., 3; A., B., & C. *trees for sale. Recite convce in fee by* X. *to* A. "in conson of the sum of £—— thrin expressed to be pd by the sd A. to the

(*b*) A power to postpone the sale is implied: L. P. Act, 1925, s. 25. Neither a power to postpone nor the fact that a consent is made necessary to the exercise of the trust for sale renders the trust any the less an immediate binding trust for sale within the meaning of the Act: see s. 205 (1) (xxix).

(*c*) See note to last Precedent. Where several persons have contributed to the purchase of land, the conveyance should be taken to trustees in trust for sale and full powers of leasing, mortgaging, and otherwise dealing with the property should be given to them. The above Precedent is intended to meet the case of a purchase made after the commencement of the Act, where the conveyance has been taken in the name of one of the contributors, the others relying for protection on the registration of a general equitable charge. Although in such a case a good title could be made on sale of the property by cancelling the registration, this course would not be feasible if it were desired to raise money on mortgage of the property.

If the purchase were made prior to the commencement of the L. P. Act, 1925, the property will have become vested under the transitional provisions of that Act in the person in whose name the conveyance was taken as trustee upon the statutory trusts: see First Schedule, Part IV.,

sd X." And whas the sd pchse-money was in fact pd by the sd A., as to the sum of £—— pt throf out of money belongg to the sd A., & as to the sum of £—— further pt throf out of money belongg to the sd B., and as to the sum of £—— the remaing pt throf out of money belongg to the sd C. upon an agreemt previously made betn the parties hereto that the sd ppty shd belong to them in undivided shares proportionate to their respt contribons to the sd pchse-money. And whas the sd pties hto being desirous of givg effect to the sd agmt behind a trust for sale of the sd ppty, have agrd to execute such conveyce in trust for sale throf as hrinar appearg: NOW THIS DEED made in conson of the premes WITNESSETH as follows:—

1. The sd A. **as tree** hby conveys & each of them the sd A., B., & C., **as settlor** in respt of the equitable intt to which he is entitled as hrinbfe appearg hby conveys & confirms unto the sd A., B., & C.: *Parcels*, pp. 480 *et seq.*; *Habendum to* A., B., & C., *in fee simple*.

2. The sd A., B., & C., shall stand possed of the ppty hby assured upon trust to sell the same & shl hold the net proceeds of any such sale after paymt of the costs & the net rents & profits until sale of the sd ppty after paymt of the costs of insurce, repairs, & current outgoings Upon trust for the sd A., B., & C., as tenants in common in the shares & proportions in wch the sd pchse-money of £—— was so contributed by them as afsd.

3. Pendg the sale of the whole of the ppty hby assured pursuant to the trust for sale throf hrinbfe declared the sd A., B., & C., or other the trees for sale for the time being throf shl have the same full & unrestricted power of mortgagg the sd ppty or any pt throf for any ppose & in any mner & of leasing or orwise dealg thrwith in all respts as if they were absolute owners throf.

In witness, &c. (*a*).

Clause 1; and the appointment of an additional trustee will become necessary on sale of the property.

A purchase by a husband in his wife's name raises a presumption of a gift to her which cannot be rebutted by evidence that the object of the transaction was, with the connivance of the wife, to deceive the husband's creditors: *Gascoigne* v. *Gascoigne*, [1918] 1 K. B. 228.

(*a*) As this deed passes no beneficial interest, *ad valorem* duty will not be payable.

III.

CONVEYANCE *and* ASSIGNMENT *by a person* GOING ABROAD *of* FREEHOLD, LEASEHOLD, *and* PERSONAL *Property to* TRUSTEES *in trust for* SALE, *with powers of* LEASING, MORTGAGING, *and* MANAGEMENT *until Sale* (*b*).

PARTIES, A., *owner*, 1; B. & C. *trees*, 2 (*c*). *Short recitals of* A.*'s title to ppty;* AND WHAS the sd A., being about to go & reside abroad, is desirous of vesting the sd ppty in the sd B. & C. upon & for the trusts & pposes & with the powers hrinar expressed & the sd B. & C. have agrd to accept such trusts; NOW THIS DEED WITNESSETH, that in psuance of the sd desire, & in conson of the premes, the sd A., **as benefl owner**, to the intent that the same covts for title to & further assurce of the premes hby assured shl be implied as if these psnts were a convce on sale of the sd premes for valuable conson (*d*), hby grts & assns unto the sd B. & C., *Freehd & leasehd parcels by a specific or general description, referrg, if convenient, to a schdle:* AND all bldgs, fixtures, machinery, tools, implemts, furniture, crops, or other produce, live & dead stk, & effects of every description upon, about, or belongg to the sd ppty & premes hby assured resply, or any pt throf: TO HOLD the same UNTO the sd B. & C., as to the sd freehd & psonal ppty (other than leasehds) in fee simple or absolutely, as the case may be, & as to the sd leasehd premes for all the residue now to come of the respective terms for wch the same are resply holden, & subjt to the rents & covts on the pt of the lessees, & condons reserved by & contained in the respective leases throf [BUT

Recitals.

Witnesseth.

Grant and assignment.

Habendum.

Subject

(*b*) For a form of power of attorney for the like purposes, see *ante*, p. 222. A conveyance in trust is preferable to giving a power, as the latter would be revoked by the appointor's death, unless it were made irrevocable, which it might be, for a period not exceeding a year, in favour of purchasers and mortgagees, under the L. P. Act, 1925, s. 127; and it is not desirable that a power of attorney should become part of the title. If the land is registered, a transfer must be made. It is not convenient that a legal term of years in lands held upon mortgage should be assigned to the trustees. If it is intended that they should be able to exercise powers of sale in mortgage deeds a separate power of attorney should be given: see *ante*, p. 207, f. 9.

(*c*) In order that the trust for sale may be effective, there must be at least two trustees or a trust corporation: L. P. Act, 1925, s. 27 (2).

(*d*) See *ante*, p. 507, note.

to mortgages. SUBJT, as to such pts of the sd ppty & premes as are affected thereby, to the sevl charges & incumbces the short parlars of wch are contained in the —— schdle hto], UPON TRUST that the sd B. & C., or other the trees for the time being of these psnts (hrinar called the trees), shl immedly or at any time or times hrafter in their uncontrolled discron, sell & dispose of the sd respective premes hby assured or any of them or any pt or pts throf, in such mner as they may think fit (*a*), [AND MAY make every or any such sale as afsd, either subjt to all or any or any pt of the charges & incumbces affectg the premes sold, or any pt or pts throf resply, or discharged from the same, or any pt or pts throf resply, or upon the terms of the pchaser or pchasers being indemnified against the same by means of a charge throf on other ppty, or in case of a rent-charge or other annual sum by means of a fund to be set apart or appropriated to provide for the paymt throf, or by any other available means, & in such mner in all respects as the trees may think fit], AND IT IS HBY FURTHER DECLARED that the trees may at any time or times hrafter demise all or any pt of the ppty & premes hby assured & for the time being remaing unsold for any term of yrs & for any ppose with or witht takg a fine or premium & upon such terms & condons in all respts as the trees shl think fit, And may exercise in relaton thrto all the powers of managemt conferred by the S. L. Act, 1925, on the trustees of a settlemt durg minority (*c*), WITH POWER for that ppose to appt &

On trust for sale.

Provision as to incumbrances (*b*).

Power to lease, &c.

Power to

(*a*) The modes in which the trust for sale may be exercised are given by the T. Act, 1925, s. 12. The trust for sale in the text is an immediate binding trust for sale within the L. P. Act, 1925, s. 205 (xxix). A power to postpone is implied in every trust for sale unless a contrary intention appears (*ib.* s. 25 (1)); and a purchaser is not to be concerned in any case with any directions respecting the postponement of a sale (sub-s. (2)). A trust either to retain or sell the land in a conveyance or settlement made after 1925 is to be construed as a trust for sale with power to postpone (sub-s. (4)). See *Re Johnson*, [1915] 1 Ch. 435, and cf. *Re Hotchkys*, 32 Ch. D. 408.

(*b*) As a result of s. 1 of the L. P. (Amendment) Act, 1926, and the minor amendment contained in the Schedule to that Act of s. 1 of the S. L. Act, 1925, there is nothing to prevent the conveyance in trust for sale being made subject to family charges nor to invalidate the power to sell subject to family charges.

(*c*) Trustees for sale have under the L. P. Act, 1925, s. 28, all the powers of a tenant for life ; and the statutory powers of leasing and management would probably be adequate in most cases.

employ any agents, overseers, recers, or other persons at such remuneron by way of salary, commission, or orwise as they may think pper, & the same from time to time to dismiss & discharge, & any others to appt or employ in their stead, & with power also to sell the produce of the sd estes & premes resply or any pt or pts throf resply in such mner in all respects as they shl think pper : [AND ALSO may mtge or charge all or any pt or pts of the sd ppty & premes wch may for the time being remain unsold for the ppose of raisg any sum or sums of moy wch the trees may think fit for discharging or reducg all or any of the charges & incumbces specified in the sd —— schdle hto, or any charges or incumbces wch may have been created under this psnt power, & wch shl for the time being be subsistg, or any pt or pts throf resply, or for the ppose of consolidatg any such charges or incumbces, or by way of secy for any such mtge debt or debts, either in addon to or in substiton wholly or in pt for any then subsistg secy or secs for the same, or for orwise effectuatg any of the pposes of these psnts ; [*Add, if desired, powers of dealg with mtges*, p. 223 ;] PROVD ALWAYS, & it is hby declared, that nothg hrin contained shl be construed to give any of the mtgees or incumbcers mentd in the sd —— schdle hto, or any other pson or psons havg any mtge or charge upon any of the sd premes any right to enforce the pformce of these psnts (*d*) or any further or addonal secy than is now possed by him or them under or by virtue of his or their existg secy or secs] ; AND IT IS HBY FURTHER DECLARED that the trees may make, enter into, execute, & do all such contracts, convces, demises, [mtges], assurces, & acts as shl be deemed necy or expedient for the ppose of effectuatg any such sale, lease, [or mtge], as afsd, & genlly shl have the same powers of dealg with the sd premes as if they were absolutely entitled thereto ; *Apptmt of B. & C. as attorneys of A.*, p. 206, *in connection with registered land*, p. 208, f. **10** ; AND IT IS HBY FURTHER AGRD & DECLARED that the trees shl stand possed of the rents & profits of the sd premes, & of all moys arisg from any sale [or mtge] throf, or any pt or pts throf, or from the sale of the produce throf, or orwise reced or realised under the trusts or powers hrinbfe contd, UPON TRUST in the first place to pay, allow, or retain out of the sd rents &

employ agents.

Power to mortgage.

This deed not to give additional security to mortgagees.

To execute assurances.

Trusts of rents, sale and mortgage moneys.

(*d*) See *Re Fitzgerald*, 37 Ch. D. 18 ; *Priestley* v. *Ellis*, [1897] 1 Ch. 489.

profits all rents, rates, taxes, & outgoings, wch shl be payable in respt of the sd premes, & the expses of repairs & insurce against fire, & against liability under the Employers' Liability Act, 1880, and the Workmen's Compenson Act, 1906, & the remuneron of agents, overseers, recers, & other psons employed in & about the same, & all expses of or incident to the managemt of the sd premes, or the receipt or recovery of the rents & profits throf, or wch may be incurred in the execution or exercise of the trusts or powers of these psnts or orwise in respt of the premes, & the intt on any ppal sums & any annual sums for the time being charged on the sd premes or any pt throf, & also if thought fit any ppal or other moys charged on the sd premes or any pt throf by way of mtge or orwise: AND UPON TRUST to pay the ultimate surplus of the rents & profits of the sd premes & of the moys arisg from any such sale [or mtge] or orwise reced or realised as afsd, after makg all such paymts, allowces, & deductions throut as hrinbfe mentd, to the sd A., for his own use absolutely; PROVD ALWAYS, & it is hby expressly declared, that all the trusts & powers hrinbfe declared & contd shl take effect & be executed & exercisable at all times hrafter witht any further consent or concurrce of or on the pt of the sd A., & whether the sd A. shl be or remain abroad or not; AND IT IS HBY AGRD & DECLARED that the power of apptg new trees of these psnts shl be vested in the sd A. durg his life (*a*); PROVD ALWAYS, & it is hby agrd that the trees shl not be responsible for any loss which may arise in the execution or exercise, or from the omission to execute or exercise, any of the trusts or powers hrinbfe contd (*b*). IN WITNESS, &c.

Powers to be exercisable without further consent.

[*Schdles.*]

(*a*) If it is probable that there will be a difficulty in communicating with A. on the death of B. or C., it may be better to rely on the statutory power of appointing new trustees.

(*b*) See also the T. Act, 1925, s. 30.

IV.

APPOINTMENT *of* NEW TRUSTEES *of* FREEHOLDS *vested in the* PUBLIC TRUSTEE *upon the* STATUTORY TRUSTS *under the* LAW OF PROPERTY ACT, 1925, FIRST SCHEDULE, PART IV. (*c*), *by* TWO PERSONS *together interested in more than* ONE-HALF *of the* INCOME (*d*), *one as* FORMER OWNER *of an* UNDIVIDED MOIETY *and the other under the* WILL *of a* DECEASED OWNER *of an* UNDIVIDED FOURTH PART *of the* PROPERTY.

THIS DEED OF APPTMT made, &c., betn M. of, &c., widow, & B. of, &c., spinster (hrinar called the appointors) of the one pt, and the sd B. & F. of, &c., of the other pt. WHAS by an indre dated, &c., & made betn X. & Y of the one pt, & A. the sd B. & C. of the other pt, the ppty particularly described in the Schdle hto was with other ppty conveyed to the use of the pties thrto of the second pt in fee simple as tenants in common in the shares follg, that is to say, as to one eql undivided moiety or half pt throf to the use of the sd A. in fee simple, as to one eql undivided fourth pt throf

(*c*) See the Preliminary Note to Conveyances on Sale, *ante*, p. 436. Under sub-paragraph 4 of paragraph 1 of the Part of the Schedule under which the appointment is made, the legal estate in land held in undivided shares vested in possession on December 31st, 1925, will have become vested in the Public Trustee in any case to which any of the three preceding paragraphs does not apply. This may occur where one undivided share was vested in trustees or settled, or where the land was vested absolutely and beneficially in more than four persons or in not more than four persons if any one of them had incumbered his share. In any such case, any persons interested in more than an undivided half of the land or the income thereof, may appoint new trustees in the place of the Public Trustee with the consent of any incumbrancers of undivided shares, and vest the land in the persons so appointed upon the statutory trusts, free from any incumbrances affecting undivided shares and from any other incumbrances except such as are secured by legal terms of years absolute.

(*d*) The expression " any persons interested," which appears in para. 1 (4) of Part IV., means, apparently, any person beneficially interested. Where, therefore, an undivided share has become settled on the trusts of a personalty settlement or forms part of settled residue under a will, the tenant for life, and not the trustees of the settlement or will, must be considered for the purposes of the sub-paragraph as included among the persons in whom the power of appointing new trustees is vested.

to the use of the sd B. in fee simple & as to the remaing undivided one-fourth pt throf to the use of the sd C. in fee simple [subjt as to the entirety of the same ppty to the sevl leases thrin mentd as affecting the same or pts throf resply]. And whas the sd A. died on the —— day of ——, havg by his will dated, &c., & proved, &c., bequeathed all his real & psnl este whatsr & wheresr situate (wch included the undivided moiety so conveyed to him in fee simple as afsd of the ppty described in the Schdle hrto) to his trees as thrin mentd upon trust to sell & convert the same & to stand possed of the net proceeds to arise from such sale & conversion after paymt of his funeral & testy expses & debts & the legacies bequeathed by his sd will upon trust to invest the same as thrin mentd & to pay the income of such investmts to the sd M. durg her life (*a*). And whas by virtue of the transitional provons of the L. P. Act, 1925, the entirety of the sd ppty became & is now vested [subjt to the leases affectg the same but orwise] free from incumbrces in the Public Tree upon the statutory trusts for sale & orwise in the sd Act mentd or referred to. And whas the Public Tree has not been requested to act in the sd statutory trusts & the appointors being psons interested in more than an undivided half pt of the income of the sd ppty are desirous of apptg the sd B. & F. (*b*) to be trees of the sd ppty in the place of the Public Tree: NOW THIS DEED WITNESSETH as follows :—

1. In exse of the power for this ppose conferred on them by the L. P. Act, 1925, & of every or any other power enablg them in this behalf the appointors hby appt the sd B. & F. to be trees of the ppty parlarly descd in the schdle hto [& of all other (if any) the ppty wch by the means afsd has become vested in the Public Tree upon the statutory trusts (*c*)] in place of the Public Tree.

(*a*) In the case supposed in the text it is assumed that B. had not incumbered or otherwise dealt with her share, and thus the concurrence of the persons claiming under the share of C., which is not necessary in the circumstances, is not thought desirable or cannot be obtained. For the case of an appointment made necessary by reason of the undivided shares having been incumbered, see Prec. VI., *post*, p. 1060.

(*b*) The power of appointing new trustees conferred upon the persons interested does not preclude the appointment by them of some one or all (not being more than four) of themselves. Compare the power of appointing new trustees under the T. Act, 1925, as to which, see *ante*, p. 122.

(*c*) The words in brackets may be useful where part of the property has previously been sold by the owners of all the undivided shares.

[2. The apptors hby declare that All & Singular the ppty descd in the Schdle hto & all other (if any) the ppty wch immedly before the commencemt of the sd Act was held at law in undivided shares as afsd & wch is capable of being vested by this declon shl vest in the sd B. & F. as joint tenants for all such este & intt as the Public Tree had thrin before the exon of these psnts upon the staty trusts applicable thrto by virtue of the L. P. Act, 1925 (*d*).]

In witness, &c.

[The Schedle.]

V.

APPOINTMENT *of* New Trustees *of* Freeholds *vested in the* Public Trustee *upon the* Statutory Trusts *under the* Law of Property Act, 1925, First Schedule, Part IV., *by* Four of Five Persons (*e*) *formerly entitled as* Tenants in Common *in* Equal Shares *under the* Will *of a* Testator *who died* before 1926.

THIS DEED OF APPOINTMENT made, Betn A. of, &c., B. of, &c., C. of, &c., & D. of, &c., *apptors* (hrinar called the apptors) of the one pt, & G. of, &c., & H. of, &c., *new trustees* of the other pt. *Recite will of* X. *devisg his real este to widow for life & then to* A., B., C., D., *& E., in eql shares. Death of testor in* 1923. *Probate & assent to devise in* 1924. *Death of widow in* 1925. And whas by virtue of the transitional provons of the L. P. Act, 1925, the entirety of the sd real este became & is now vested in the Public Tree upon the staty trusts for sale & orwise in the sd Act mentd or referred to. And whas the Public Tree has not been requested to act in the sd statuty trusts & the apptors being psons interested in more than an undivided half pt of the income of the sd real este are desirous of appty G. & H. to be trees of the sd real este in the place of

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(*d*) By virtue of the L. P. (Amendment) Act, 1926, Schedule, the words "vest the land" in L. P. Act, 1925, Schedule I, Part IV., paragraph 1 (4) (iii), must now be read "thereupon the land shall by virtue of this Act vest." The effect of this minor amendment is to render an express vesting declaration unnecessary in this and all similar cases.

(*e*) See *ante*, p. 1057, note (*c*).

the Public Tree. And whas the sd real este now consists of the freehd messuages & ppty specified in the Schdle hto: NOW THIS DEED WITNESSETH that in exse of the power for this ppose conferred on them by the L. P. Act, 1925, & of every or any other power enablg them in this behalf the apptors hby appt the sd G. & H. to be trees of the ppty parlarly descd in the Schdle hto in the place of the Public Tree (*a*).

In witness, &c.

[Schdle.]

VI.

APPOINTMENT *of* New Trustees *of* Freeholds *vested in the* Public Trustee *upon the* Statutory Trusts *under the* Law of Property Act, 1925, First Schedule, Part IV. (*b*), *by the* Persons *interested in the* whole *of the* Income *as* Former Owners *of* Undivided Shares, One Share *having been* Incumbered (*c*).

A DEED OF APPOINTMENT made by A. of, &c., B. of, &c., & C. of, &c., *apptors* (hrinar called the apptors). *Recite conveyce to the apptors as tenants in common in eql shares of* "the ppty parlarly descd in the schdle hto": And whas by a mtge dated, &c., & made betn the sd C. of the one pt & M. of the other pt, all that the one undivided third pt or share of the sd C. of & in the sd ppty so conveyed in undivided shares as afsd was conveyed by the sd C. to the use of the sd M. in fee simple by way of mtge for securing paymt to the sd M. of the ppal sum of £—— with intt thron as thrin mentd. And whas

(*a*) No vesting declaration is necessary. See *ante*, p. 1059, note (*d*).

(*b*) See *ante*, p. 1057, note (*c*).

(*c*) The incumbrance upon the undivided share does not prevent the property from vesting in the Public Trustee free from incumbrances. Although the consent of the incumbrancer is necessary to the appointment (sub-para. 4), and may be necessary to the exercise by the trustees of the statutory trusts (sub-para. 9), a purchaser from the trustees will not be concerned to see whether the necessary consent was given in either case. It is unnecessary therefore that the incumbrancer should concur in the appointment. For a separate form of consent by an incumbrancer, see *ante*, p. 737.

by virtue of the transitional provons of the L. P. Act, 1925, the entirety of the sd ppty became & is now vested free from incumbrces in the Public Tree upon the staty trusts for sale & orwise in the sd Act mentd or referred to ; AND WHAS the Public Tree has not been requested to act in the sd staty trusts, & the apptors being the psons intted in the whole of the income of the sd ppty are desirous of apptg themselves to be new trees of the sd ppty in the place of the Public Tree : NOW THIS DEED WITNESSETH that in exse of the power for that ppose conferred on them by the L. P. Act, 1925, & of every or any other power enablg them in this behalf the apptors hby appt themselves to be trees of the ppty parlarly descd in the schdle hto in place of the Public Tree (*d*).

IN WITNESS, &c.

[Schdle.]

VII.

APPOINTMENT *of* NEW TRUSTEES *of* FREEHOLDS *vested in the* PUBLIC TRUSTEE *upon the* STATUTORY TRUSTS *under the* LAW OF PROPERTY ACT, 1925, FIRST SCHEDULE, PART IV. (*e*), *by the* PERSON *interested in the* WHOLE *of the* INCOME *as* FORMER OWNER *of an* UNDIVIDED MOIETY *and* TENANT FOR LIFE *under a* STRICT SETTLEMENT *of the* REMAINING MOIETY.

THIS DEED OF APPOINTMENT made, &c., Betn A., *apptor* of, &c. (hrinar called the apptor), of the one pt, & B. & C., *new trees* (hrinar called the trees) of the other pt ; WHAS immedy before the commencemt of the L. P. Act, 1925, the ppty parlarly descd in the Schdle hto was held at law in undivided shares in mner follg, that is to say, One undivided moiety of the sd ppty was vested in the apptor for an este in fee simple in posson free from incumbces, & the remaing undivided moiety throf was settled land wch under or by virtue of the will dated, &c., & proved, &c., of X. who died, &c., stood limited to uses under wch the apptor was tenant for life in posson throf ; AND WHAS by virtue of the

(*d*) No vesting declaration is necessary, see *ante*, p. 1059, note (*d*).

(*e*) See *ante*, p. 1057, note (*c*).

transitional provons of the sd Act the entirety of the sd ppty became & is now vested free from incumbrces in the Public Tree upon the staty trusts for sale & orwise in the sd Act mentd or referred to; AND WHAS the Public Tree has not been requested to act in the sd staty trusts & the apptor being intted in the whole of the income of the sd ppty is desirous of appting the trees to be the new trees of the sd ppty in the place of the Public Tree: NOW THIS DEED WITNESSETH that in exse of the power for this ppose conferred on him by the L. P. Act, 1925, & of every or any other power enablg him in this behalf the apptor hby appts the trees to be trees of the ppty particularly descd in the Schdle hto in the place of the Public Tree (*a*). IN WITNESS, &c.

[Schdle.]

VIII.

APPOINTMENT *of* NEW TRUSTEES *of* LEASEHOLDS *vested in the* PUBLIC TRUSTEE *upon the* STATUTORY TRUSTS *under the* LAW OF PROPERTY ACT, 1925, FIRST SCHEDULE, PART IV., *by the persons interested in the* WHOLE *of the* INCOME *of* UNDIVIDED MOIETIES *formerly vested in* TWO SETS *of* TRUSTEES (*b*).

PARTIES, A. & B., *apptors* (hrinar called the apptors), 1; D., E., F., & G., *new trees*, 2. *Recite lease to* Y. *& Z., saying* "the ppty parlarly desced in the Schdle hto was [with other ppty] demised," &c. *Recite devolution of title & ultimate assent to* K., *whby* "one undivided moiety of & in the premes comprised in & demised by the recited lease became absolutely vested in the sd K. for all the residue then unexpired of the sd term of —— yrs granted by the recited lease." *Recite will of* K.

(*a*) No vesting declaration is necessary. See *ante*, p. 1059, note (*d*).

(*b*) See *ante*, p. 1057, note (*c*). Where, as in the case supposed in the text, one undivided moiety of land was at the commencement of the L. P. Act, 1925, held by one set of trustees and the other moiety by another set of trustees upon different trusts, it would seem that the entirety of the land is not vested in trustees within the meaning of para. 1 (1) of Part IV., and that para. 1 (4) consequently applies.

containg general devise & bequest of real & psnl este to D. *&* E., "includg the undivided moiety of & in the leasehold premes so assned to him as afsd upon trust to sell & convert the same into money, & to stand possed of the net proceeds to arise from such sale & conversion after paymt of his funeral & testy expenses & debts & the legacies bequeathed by his sd will upon trust to invest the same as thrin mentd & to pay the income of such investmts to the sd A. durg her life." *Death of* A. *& probate ; recite will of* Z. *contg general devise & bequest of real & psnl ppty,* "including the remaining undivided moiety of & in the sd leasehd premes" *to* F., G., *&* H., *in trust for sale & investmt & trusts of income of investmts in favour of* B. *for life. Death of* Z. *& probate :* AND WHAS by virtue of the transitional provons of the L. P. Act, 1925, the entirety of the ppty descd in the Schdle hto [forming pt of the premes comprised in & demised by the recited lease] became & is now vested in the Public Tree for all the residue unexpired of the sd term of —— yrs grted by the sd lease subjt to the rent reserved by & the covts & condons contd in the sd lease upon the staty trusts for sale & orwise in the sd Act mentd or referred to ; AND WHAS the Public Tree has not been requested to act in the sd staty trusts & the apptors being psons interested in the whole of the income of the sd leasehd ppty are desirous of apptg the sd D., E., F., & G. to be the trees of the sd ppty in the place of the Public Tree : NOW THIS DEED WITNESSETH that in exse of the power for this ppose conferred on them by the L. P. Act, 1925, & of every or any other power enablg them in this behalf the apptors hby appt the sd D., E., F., & G. to be the trees of the ppty descd in the Schdle hto [and of all other, if any, the leasehd ppty which by the means afsd has become vested in the Public Tree upon the staty trusts (*c*)] in the place of the Public Tree for all the pposes for wch the Public Tree was by the sd Act constituted a tree throf. IN WITNESS, &c.

[Schdle.]

(*c*) See *ante*, p. 1058, note (*c*).

IX.

CONVEYANCE *on* PARTITION *of* FREEHOLDS *held in* TRUST *for* SALE *under a* PERSONALTY SETTLEMENT, *to a* BENEFICIARY (*a*).

PARTIES, A. & B., *trees for sale* (hrinar called the trees), 1; C., *beneficiary*, 2. WHAS by an indre dated, &c., & made, &c., being a convce made in conson of the marre shortly afterwards solemised betn the sd. X. & Y., certain freehd ppty situate, &c., including the ppty hby assured, was conveyed to the use of the trees in fee simple upon trust to sell (*b*) the same with full power to postpone the sale of all or any pt throf, AND to stand possed of the proceeds of such sale & of the rents & profits until sale upon trusts under wch upon the death wch occurred on the —— day of —— of the survor of the sd X. & Y. the sd proceeds have become absolutely vested in the sd C. & other psons in undivided shares; AND WHAS the trustees as such trees for sale as afsd & in exse of the power in that behalf conferred by s. 28 of the L. P. Act, 1925, have arranged with the

(*a*) Where the proceeds of sale of land held in trust for sale have become absolutely vested in undivided shares, the trustees for sale are given power by s. 28 (3) of the L. P. Act, 1925, to make a partition of the land with the consent of the persons, if any, of full age, not being annuitants, interested in possession in the net rents and profits of the land until sale. Upon the partition being arranged the trustees must give effect to it by conveying the land, so partitioned, in severalty to the persons respectively entitled under the arrangement for partition.

Neither the infancy nor lunacy of any person entitled to a share of the proceeds, nor the fact that a share has become subject to a derivative settlement, or is incumbered, will prejudically affect the exercise of the power. The necessary consents must be obtained by the trustees for their own protection, but a purchaser will not be concerned to see or inquire whether any such consent has been given. It will therefore be unnecessary to insert in any of the conveyances executed for the purpose of giving effect to the partition recitals as to the title of the several beneficiaries or of the terms upon which the partition has been arranged. For form of consent to a partition, see *ante*, p. 736.

(*b*) The trust to convey for the purpose of carrying into effect a partition arranged under s. 28 (3) is not one of those statutory powers requiring (sub-s. 1) the same consents (if any) as would have been required on a sale under the trust for sale, and is not apparently a power to which s. 26 (1) applies. It is therefore unnecessary to show in recital what (if any) consent to a sale was required by the settlement. In any case, it would be unusual that any other consents than those of the tenants for life who *ex hypothesi* are dead would have been required.

sd C. & other the psons interested in posson in the net rents & profits of the sd ppty until sale to make a partition of the sd ppty & for the ppose of givg effect to such partition so far as regards the ppty to be taken by the sd C. being the ppty descd in the First Schdle hto have agrd to execute such convce throf as hrinar appearg: NOW THIS DEED made in pursce of the staty requiremt in this behalf WITNESSETH as follows:—

1. The trees **as such trees as afsd** hby convey unto the sd C. *Parcels by refce to the First Schdle*, p. 483; To HOLD the same Unto the sd C. in fee simple discharged from the sd trust for sale.

2. *Acknmt by* A. *&* B. *as to documts in Second Schdle*, p. 515. IN WITNESS, &c. (*c*).

[Two Schdles.]

X.

CONVEYANCE *on* PARTITION *of* FREEHOLDS *held in* TRUST *for* SALE *under a* PERSONALTY SETTLEMENT *to the* TRUSTEES *of a* DERIVATIVE SETTLEMENT (*d*).

PARTIES, A. & B., *trees for sale* (hrinar called the trees), 1; E. & F., *trees of derivative settlmt*, 2. *Recite settlemt on trust for sale as in last Prec., saying* "upon trusts under wch upon the death, &c., the sd proceeds have become absolutely vested in sevl psons in undivided shares," AND WHAS by an indre dated, &c., & made betn C. (one of the psons entitled under the trusts of the sd settlemt to an undivided share of the sd proceeds of sale) of the first pt, M. of the second pt, & the sd E. & F. of the third pt, all the share & intt of or to wch the sd C. was then or might thrafter become entitled in the sd proceeds of sale was assned by the sd C. to the sd E. & F. upon the trusts thrin mentd being trusts under wch the sd C. is entitled to the income throf durg her life; AND WHAS the trees as such trees for sale as afsd & in exse of the power in that behalf conferred by s. 28

(*c*) It is understood that the conveyance will be stamped with the *ad valorem* duty (if any) on any money which under the arrangement for partition may be payable by the grantee for equality of partition. Stamp.

(*d*) See notes to Precedent IX.

of the L. P. Act, 1925, have arranged with the sd C. & other the psons interested in posson in the net rents & profits of the sd ppty until sale to make a partition of the sd ppty & for the ppose of givg effect to such partition so far as regards the ppty appropriated to the settled share of the sd C. being the ppty descd in the First Schdle hrto have agrd to execute such convce throf as hrinar appearing : NOW THIS DEED made in psuance of the staty requiremt in this behalf WITNESSETH as follows :—

1. The trees **as such trees as afsd** hby convey Unto the sd E. & F., *Parcels by refce to First Schdle,* p. 483, To HOLD the same Unto the sd E. & F. in fee simple discharged from the the sd trust for sale.

2. The trees shl stand possessed of the ppty hby assured upon trust to sell the same & shl hold the proceeds of any such sale after paymt of costs & the net rents & profits until sale after paymt of all outgoings Upon the trusts & with & subjt to the powers & provons wch under the lastly hrinbfe recited settlemt are declared & now subsistg with respt to the trust fund thrby settled & the income throf resptly.

3. *Acknowledgmt by* A. *&* B. *as to documts in Second Schdle,* p. 515.

IN WITNESS, &c.

[Two Schdles.]

XI.

CONVEYANCE *on* PARTITION *of* FREEHOLDS *held in* TRUST *for* SALE *under* SECTION 36 *of the* SETTLED LAND ACT, 1925, *to a* BENEFICIARY (*a*).

PARTIES, A. & B., *trees for sale* (hrinar called the trees), 1 ; C., 2. WHAS by an indre dated, &c., & made, &c., being a settlemt made in conson of the marre then intended & shortly afterwds solemnised betn the sd X. & Y., certain freehd estes & ppty (including the ppty hby assured) were limited & settled after the solemnisation of the sd marre [& subjt to a power of apptmt wch was never exercised & has now ceased & to certain

(*a*) See Notes to Precedent IX.

estes & charges wch have ceased or become satisfied] to the use of the sd X. for his life [witht impeachmt of waste] & after his death hrinar recited, & after sevl limons wch have since determined or become incapable of takg effect to the use of all the chldn of the sd X. [by the sd Y.] in fee simple as tenants in common in eql shares; AND WHAS by a vesting deed, dated, &c., & made psuant to the S. L. Act, 1925 (*b*), betn, &c., the sd freehd estes & ppty were duly vested in the sd X. upon the trusts & subjt to the powers & provons upon & subjt to wch under the sd indre of settlemt or orwise the same ought from time to time thenceforward to be held, & it was thrin stated (*c*) that the trees were the trees of the settlemt then subsistg under or by virtue of the sd vesting deed, and the recited indre for all the pposes of the sd Act; AND WHAS the sd X. died on the —— day of ——, having by his will dated, &c., appted the trees to be special trees (*d*) throf in respt of the sd settled estes & ppty to whom probate of the sd will limited to the sd estes & ppty was duly granted out of the —— Probate Registry, on the —— day of ——. AND WHAS by an assent dated, &c., & made, &c., all the sd settled estes & ppty were duly vested in the trees upon the staty trusts for sale & orwise thrin mentd or referred to under wch trusts the proceeds to arise from the sale throf have become absolutely vested in the sd C. & other the chldn of the sd X. & Y. now livg [or the repves of such of them as are now dead] in eql shares as tenants in common; AND WHAS the trees have arranged with the sd C. & other the psons interested in posson in the net rents & profits of the sd estes & ppty until sale to make a partition of the sd estes & ppty & for the ppose of givg effect to such arrangemt so far as regards the ppty to be taken by the sd C. (being the ppty descd in the First Schdle hto) have agrd to execute such convce throf as hrinar appearg: NOW THIS DEED made in conson of the premes WITNESSETH as follows:—

1. The trees **as trees** in exse of the staty power in this behalf hby convey unto the sd C. *Parcels by refce to the First Schdle,* TO HOLD the same unto the sd C. in fee simple discharged from the sd staty trusts.

(*b*) See the Second Schedule to the Act.
(*c*) See S. L. Act, 1925, s. 5.
(*d*) See Administration of Estates Act, 1925, s. 22.

2. *Acknmt by trees with C. as to documts in the Second Schdle*, p. 515.

In witness, &c.

[*Schdles.*]

XII.

CONVEYANCE *on* Partition *of* Freeholds Held *on the* Statutory Trusts. Short Form (*a*).

Parties, A. & B., 1; A., 2. Whas by the effect of the transitional provons of the L. P. Act, 1925, the ppty hby assured with other ppty of wch the sd A. & B. were prior to the commencemt of the sd Act seised in fee simple as tenants in common in eql shares free from incumbces became & is now vested in the sd A. & B. as este owners in respt of the fee simple throf upon the staty trusts for sale & orwise, And whas the sd A. & B. as such trees as afsd & in exse of the power in that behalf conferred by s. 28 of the L. P. Act, 1925, have arranged to make a partition of the sd ppty, & for the ppose of givg effect to such partiton so far as regards the ppty to be taken by the sd A. (being the ppty descd in the First Schdle hrto) have agrd to execute such convce throf as hrinar appearg: NOW THIS DEED made in psuance of the staty requiremt in this behalf WITNESSETH as follows:—

1. The sd A. & B. hby convey unto the sd A. (*b*). *Parcels by refce to the First Schdle*, p. 483. To hold the same unto the the sd A. in fee simple discharged from the sd staty trusts.

2. *Acknmt by A. & B. as to documts in Second Schdle*, p. 515.

In witness, &c.

[Two Schdles.]

(*a*) See notes to Precedent IX.

(*b*) See L. P. Act, 1925, s. 72 (4). The statutory covenants which may be implied on a conveyance by one person to himself and another (s. 82) are not applicable where the conveyance is by two persons to one of themselves, and can seldom be required in that case.

XIII.

ASSIGNMENT *on* PARTITION *of* LEASEHOLDS *held upon the* STATUTORY TRUSTS *by the* SURVIVING EXECUTOR *and* TRUSTEE (*c*) *of a* WILL *to one of the* BENEFICIARIES.

PARTIES, A., *exor & tree*, 1; C., beneficiary, 2. *Recite lease of premes to be taken by beneficiary;* [*assignment of lease or devolution of title (if any) to the testator*, pp. 452, 453]; *will of testor containg general devise & bequest including as well the ppty comprised in & demised by the recited lease as other* [*freehd &*] *leasehd ppty situate, &c., to* A. *&* B. *in trust for sale & division of proceeds after paymt of debts, &c., among his childn as thrin mentd; death of testor & probate; death of* B.; AND WHAS by the effect of the transitional provons of the L. P. Act, 1925, all the same [freehd &] leasehd premes so [devised &] bequeathed as afsd became vested in the sd A. as the surviving tree of the sd will of the sd testor upon the staty trusts for sale & orwise in the sd Act mentd or referred to; AND WHAS the sd A. as such tree for sale as afsd & in exse of the power in that behalf conferred by s. 28 of the L. P. Act, 1925, has arranged with the sd C. & all other the psons interested in posson in the net rents & profits until sale of the sd devised [freehd &] leasehd premes to make a partition of the sd premes & for the ppose of givg effect to such partition so far as regards the premes to be taken by the sd C. being the messge & premes descd in the First Schdle hto have agrd to execute such assnmt throf as hrinar appearg: NOW THIS DEED made in psuance of the staty requiremt in this behalf WITNESSETH as follows:—

1. THE SD A. **as tree** hby assns unto the sd C.: *parcels*, p. 480; *habendum to C.*, p. 504; discharged from the trusts afsd but subjt henceforth to the yearly rent, &c.

2. THE COVTS referred to in para. D. (1) of sub-s. (1) of s. 7 of the L. P. Act, 1925, shl be deemed to be implied in this assnmt on the part of the sd C.

3. Acknmt by A. for production of documts.

IN WITNESS, &c.

[Two Schdles.]

(*c*) As no capital money arises on the transaction, it is unnecessary to appoint an additional trustee to execute the conveyance: L. P. Act, 1925, s. 27 (2).

XIV.

CONVEYANCE *for giving effect to an* APPROPRIATION *of* FREEHOLD PROPERTY *to a* LEGATEE (*a*).

THIS CONVEYANCE, dated, &c., & made, &c., betn A. of, &c., & B. of, &c., *exors* of the one pt, & C. of, &c., *residuary legatee* of the other pt. WHAS the sd A. & B. as exors of the will dated, &c., of X., who died on the —— day of —— 19—, & in exse of the power in that behalf conferred by s. 41 of the A. of E. Act, 1925, have with the consent hby testified of the sd C. appropriated to him the ppty hby assured in [pt] satison of his share in the residuary este of the sd X. *or as the case may be:* NOW THIS DEED made for the ppose of givg effect to such appropriation WITNESSETH that the sd A. & B. **as personal representatives of the sd X. deceased** hby convey to the sd C. *Parcels*, p. 480. TO HOLD unto the sd C. in fee simple. IN WITNESS, &c.

(*a*) Extensive powers of appropriation of real or personal property in or towards satisfaction of legacies, shares of residue, and other interests in the property of a deceased person, whether dying testate or intestate, are given to his personal representatives by s. 41 of the A. of E. Act, 1925.

The consent of the person in whose power the appropriation is made is all that is necessary in the case of a person absolutely and beneficially entitled in possession and not under any disability. In the case of a settled legacy, share, or interest, the consent of the trustee, if any (not being the personal representative), or the person for the time being entitled to the income is required if possible to be obtained; and the consent of the guardian, committee, or receiver, must, if possible, be obtained to an appropriation in favour of an infant or lunatic. Sub-s. 7 provides that if after any real estate has been appropriated in purported exercise of the powers conferred by the section, the person to whom it was conveyed disposes of it or any interest therein, then, in favour of a purchaser, the appropriation shall be deemed to have been made in accordance with the requirements of the section and after all requisite consents, if any, have been given.

Protection of purchaser.

Effect may be given to an appropriation by a deed of conveyance or assent: A. of E. Act, 1925, ss. 36 (1) and 41 (3). The only advantage to be gained by a deed being the concurrence therein of the person whose consent to the appropriation is necessary. In either case the precaution should be taken of requiring the instrument to be endorsed on the probate or letters of administration. See A. of E. Act, 1925, s. 36 (5), and *post*, p. 1072, note (*d*).

XV.

ASSENT *by* PERSONAL REPRESENTATIVES *in favour of* A PERSON ABSOLUTELY ENTITLED *free from* INCUMBRANCES (*b*).

WE, A. of, &c., & B. of, &c., as the psonal representatives of X. late of, &c., deceased, do this —— day of —— 19— hby **as personal representatives** (*c*) assent to the vesting in C. of, &c., of All that, &c. *Parcels*, p. 480, *or* of All the ppty descd in the Schdle hrto for all the este or intt of the sd X. at the time of his death **[***or* for an este in fee simple**]**.

AS WITNESS, &c. (*d*).

[Schdle.**]**

(*b*) The above Precedent is substantially in the form given in the Fifth Schedule of the L. P. Act, 1925, where the assent is expressed to be given by a sole executor. All the powers which are by law conferred on the personal representative may be exercised by the proving executor or executors for the time being, and will be as effectual as if all the persons named as executors had concurred therein: A. of E. Act, 1925, s. 8 (1). No alteration in the form in the Schedule will be required when the assent is given by an administrator. Form of assent.

The statutory requirements for a valid assent to the vesting of a legal estate are that the assent must be in writing, signed by the personal representative, and must name the person in whose favour it is given: A. of E. Act, 1925, s. 36 (4).

In its application to real and leasehold property, the law relating to assents has been radically altered by the A. of E. Act, 1925, s. 36. Conformably to the principle of keeping trusts and equities off the title an assent made after 1925 and in the proper form will operate as a principal instrument to vest in the person in whose favour it is given the legal estate to which it relates. It has a statutory operation independently of the will (if any) and supersedes the will as a document of title. It is not an assent to a devise in the sense in which an assent was formerly understood, that is to say, of confirming the devise in the terms in which it is made by the will. See further, *ante*, p. 456, note (*a*). Operation of assent.

The effect of an assent made before 1926 was to vest the legal estate in the legatee or devisee without any conveyance: *Re Calverhouse, Cook* v. *Calverhouse*, [1896] 2 Ch. 251.

(*c*) See A. of E. Act, 1925, s. 36 (3).

(*d*) The assent should be indorsed on or permanently annexed to the probate or letters of administration. See A. of E. Act, 1925, s. 36 (5) and (6).

XVI.

ASSENT *by* PERSONAL REPRESENTATIVES *in favour of* A PERSON ABSOLUTELY ENTITLED *to* LEASEHOLDS *by* ENDORSEMENT *on the* LEASE (*a*).

WE, A. of, &c., & B. of, &c., as the psonal representatives of X. late of, &c., deceased, do this —— day of ——, 19—, hby **as personal representatives** (*b*) assent to the vestg in C., &c., of all the premes demised by the within-written lease for the residue of the term of —— yrs grted by the sd lease.

AS WITNESS, &c. (*c*).

XVII.

ASSENT *by* PERSONAL REPRESENTATIVES *in favour of* TRUSTEES FOR SALE *under a* WILL. VARIATION *where the* PERSONAL REPRESENTATIVES *are* THEMSELVES *the* TRUSTEES (*d*).

1. WE, A. of, &c., & B. of, &c., as the psonal representatives of X. late of, &c., deceased, do this —— day of ——, 19—, hby **as personal representatives** assent to the vestg in C.

(*a*) If the testator were not the original lessee the assent may be endorsed on the assignment to him in similar terms, referring in that case to "the within-mentioned lease."

(*b*) See A. of E. Act, 1925, s. 36 (3).

(*c*) See p. 1071, note (*d*).

(*d*) See the note to Prec. XV., and *ante*, p. 142, note (*aa*). The A. of E. Act, 1925, by sub-s. (7) provides that an assent or conveyance in respect of a legal estate shall, in favour of a purchaser, unless the probate has been endorsed with notice of a previous assent, be taken as sufficient evidence that the person in whose name the assent or conveyance is given or made is the person entitled to have the legal estate conveyed to him upon the proper trusts, if any. An assent in the form given in the text, which follows Form 9 in the Sixth Schedule of the L. P. Act, 1925, is the only documentary evidence which a purchaser can require, in addition to the probate, of the title of the trustees to sell. It corresponds to a conveyance of land upon trust for sale where the proceeds are to be held on the trusts of a personalty settlement; the will representing the settlement of the proceeds. The power of appointing new trustees, if any such power is conferred by the will, should be mentioned in the assent; otherwise it will be impossible where new trustees have been appointed under the power to satisfy a purchaser, without production of the will, that such trustees are duly constituted.

of, &c., & D. of, &c. [*or* ourselves] of All those [Parcels as at p. 480] for an este in fee simple Upon trust [with the consent in writing of M. of, &c., & N. of, &c., durg their joint lives or of the survor of them durg his or her life] to sell the same or any pt throf with full power to postpone the sale & to stand possessed of the net proceeds of sale & the net rents & profits until sale upon the trusts resptly declared concerng the same by the Will, dated, &c., of the sd X. deceased.

2. THE POWER of apptg new trees hrof is vested in the sd M. & N. jointly during their joint lives or in the survor of them durg his or her life *or* [**2.** The staty power of apptmt of new trees is applicable hto].

AS WITNESS, &c. (*e*).

XVIII.

VESTING ASSENT *by* PERSONAL REPRESENTATIVES *on the death of a* TENANT FOR LIFE *of* SETTLED LAND *in favour of the next* TENANT FOR LIFE *or the* STATUTORY OWNERS (*f*).

1. WE, A. of, &c., & B. of, &c., as the psonal representatives of C. late of, &c., deceased, do this —— day of ——, 19—, hby **as personal representatives** assent to the vestg in M. of, &c., *or* "in ourselves" of All the ppty comprised in a vestg deed (*g*), dated, &c., & made, &c., for all the este or intt thrin of the sd C. at the time of his death.

2. THE SD ppty is vested in the sd M. upon the trusts declared concerng the same by a trust instrumt, dated, &c., & made, &c., being the trust instrumt referred to in the above mentd vestg deed, or upon such other trusts as the same ought to be held from time to time.

3. WE, THE SD A. & B., are the trees of the settlemt for the pposes of the S. L. Act, 1925.

(*e*) See p. 1071, note (*d*).

(*f*) See S. L. Act, 1925, ss. 8 and 5 (2).

(*g*) Alternatively the property may be specifically described either in the body of the instrument or by reference to schedules as "all that farm, &c.," *or* "all the property described in the schedule hereto." In this case the reference to the vesting deed in Clause 2 of the above precedent will of course be omitted.

[**4.** The following additional or larger powers are conferred by the sd trust instrumt in relation to the settled land, & by virtue of the S. L. Act, 1925, operate & are exercisable as if conferred by that Act on a tenant for life [*insert the additional powers*].]

5. The power of apptg a new tree or new trees of the settlemt is vested in the sd M. durg his life, *or* "The staty power of apptmt of new trees is applicable hrto."

As witness, &c. (*h*).

XIX.

ASSENT *by* Personal Representatives *in favour of the* Trustees *of a* Settlement *pursuant to the* Settled Land Act, 1925, s. 36.

1. WE, A. of, &c., & B. of, &c., as the personal representatives of X., late of, &c., deceased, do this —— day of —— 19—, hby **as personal representatives** assent to the vestg in C. of, &c., & D. of, &c., of All the ppty comprised in a vestg deed dated, &c., & made, &c., for all the este & intt thrin of the sd X. at the time of his death.

2. The sd ppty is vested in the sd C. & D. Upon trust to sell the same with full power to postpone the sale of the whole or any pt throf, & to stand possessed of the net proceeds of sale, after paymt of costs, & of the net rents & profits until sale, after paymt of rates, taxes, costs of insurance, repairs & other outgoings upon such trusts & subjt to such powers & provons as may be requisite for givg effect to the rights of the psons interested thrin.

3. The staty power of apptmt of new trees is applicable hto.

As witness, &c. (*h*).

XX.

VESTING Assent *by* Personal Representatives *in favour of* a Tenant for Life *of* Freeholds *and* Leaseholds *under the* Will *of a* Testator *dying after* 1926 (*a*).

1. WE, A. of ——, in the coy of ——, & B. of ——, in the

(*h*) See p. 1071, note (*d*).

(*a*) See S. L. Act, 1925, s. 6.

coy of ——, as the psonal repres of X. late of, &c., deceased, do this —— day of —— hby **as personal representatives** assent to the vestg in C. of ——, in the coy of ——, of ALL the ppty descd in the First & Second Schdle hto As to the ppty descd in the First Schdle hto for an este in fee simple, & As to the ppty descd in the Second Schdle hto for all the residue of the term of yrs for wch the sevl pts throf are resply held (*b*).

2. THE PREMES are vested in the sd C. upon the trusts declared concerng the same by the Will, dated, &c., of the sd X., or upon such other trusts as the same ought to be held from time to time.

3. THE SD A. & B. are the trees of the settlemt for the ppses of the S. L. Act, 1925.

4. NO PERSON is nominated by the sd Will for the ppse of apptg new trees of the settlemt.

AS WITNESS, &c. (*c*).

[Two Schdles.]

XXI.

PRINCIPAL VESTING DEED *for giving effect to a* SETTLEMENT (*d*) *by* DEED *of* FREEHOLDS *and* LEASEHOLDS *subsisting at the commencement of the* SETTLED LAND ACT, 1925.

THIS VESTING DEED made the —— day of —— Betn E. of, &c., & F. of, &c., of the one pt, & A. of, &c., of the other

(*b*) It is not permissible to describe the property by reference to the will which, by the S. L. Act, 1925, s. 6, is constituted the trust instrument of the settlement: see s. 5 (2). The description should therefore be such as by comparison with the earlier documents of title will identify the property without any assistance from the context of the will. The description of the freehold property should be taken from the last conveyance in each case, and that of the leasehold property from the leases under which the several parts are respectively held.

(*c*) Notice of the assent should be endorsed on the Probate: A. of E. Act, 1925, s. 36 (5) and (6).

(*d*) Under the S. L. Act, 1925, Second Schedule, para. 1, the settlement including (s. 117 (1) (xxiv) and (xxxi)), the instruments if more than one which together constitute the settlement becomes a trust instrument within the meaning of the Act; and the trustees of the settlement, except in the cases in sub-paras. (5) and (7), are bound at the request of the tenant for life or statutory owners to execute a principal vesting deed, con-

pt ; WHAS by an indre dated, &c. (being a settlemt made in conson of the marre (shortly afterwds solemnised) of the sd A. & B., the freehd ppty descd in the First Schdle hto was limited & settled after the solemnisation of the sd marre [& subjt to certain uses & charges wch have failed or determined or become satisfied] to the use of the sd D. & E. for the term of 99 yrs upon the usual trusts for securing the annual sum of £—— by way of pin money to the sd B. with remr to the use of the the sd A. & his assns during his life with remrs over, AND by the same indre the leasehd premes descd in the Second Schdle hto was assned to the sd D. & E. for the respve residues of the terms for wch the same premes are held resply under the leases referred to in the same Schdle, AND subjt to the paymt of the rents & the perfce & observce of the covts & agrmts on the pt of the respve lessees & the condons by & in the same leases resply reserved & contd to be held by them after the solemnisation of the sd marre upon the trusts & subjt to the powers & provons correspondg with the uses, trusts, powers & provons thrinbfe limited & decld concerng the freehd ppty thrby settled or as near thrto as the nature of the premes wd admit, but not so as to increase or multiply charges or powers of charg & so that the sd leasehd premes shd not vest in any pson thrby made tenant in tail male or in tail by pchase unless he or she shld attain the age of 21 yrs, but on his or her death under that age shd devolve as if the same had formed pt of the freehd ppty thrby settled. AND the sd D. & E. were by the same indre apptd to be trees of the settlemt thrby made for the pposes of the S. L. Acts, 1882 to 1890, AND the power of apptg new trees

taining the proper statements and particulars and declaring that the legal estate in the settled land shall vest or is vested in the tenant for life or statutory owners including themselves, if they are statutory owners. The proper statements and particulars are those prescribed by s. 5 (1) of the Act ; and, under sub-s. (2) of that section, may be made by reference to the settlement, being *ex hypothesi*, a settlement subsisting at the commencement of the Act, and to any instrument whereby land has been conveyed to the uses or upon the trusts of the settlement. This, though permissible, is not always advisable : see note (*a*), p. 1078. Where at the commencement of the Act the settled land remains vested in personal representatives, para. 2 of the Second Schedule will apply, and the vesting instrument will usually take the form of a vesting assent as in Prec. XX., *ante*, p. 1074. Where the land is held in undivided shares vested in possession the provisions of the L. P. Act, 1925, First Schedule, Part IV., will apply.

of the sd settlemt was thrby conferred upon the sd A. durg his life ; AND WHAS by an indre dated, &c., & made betn the sd A. of the first pt, the sd D. of the second pt, F. of the third pt, & E. & F. of the fourth pt, the sd A. in exse of the power for that ppose conferred on him by the recited indre apptd F. to be a tree of the sd indre in the place of the sd D. (who thrupon retired from the trust) to act jointly with the sd E. for all the ppses of the sd indre ; AND WHAS the sd A. has requested the sd E. & F. to execute a ppal vestg deed psuant to the provons of the S. L. Act, 1925 : NOW for giving effect to the requirements of the sd Act THIS DEED WITNESSETH as follows :—

1. THE SD E. & F. as trees hby declare that All & Singular the ppty & premes resply mentd in the First & Second Schdles hto & all other (if any) the ppty & premses capable of being vested by this declon wch are now by any means subjt to the limitations of the recited settlemt are vested in the sd A. As to the freehd ppty mentd in the First Schdle hto in fee simple, & As to the leasehd premes mentd in the Second Schdle hto, for all the residue of the terms of yrs for wch the same are respvly held.

2. THE SD A. shl stand possed of the sd ppty & premes upon the trusts & subjt to the powers & provons upon & subjt to wch under the recited settlemt or orwise the same ought to be held from time to time.

3. THE SD E. & F. are the trustees of the settlemt for the pposes of the S. L. Act, 1925.

4. THE FOLLG additional or larger powers are conferred by the sd settlemt in relation to the settled land, & by virtue of the S. L. Act, 1925, operate & are exseable as if conferred by that Act on a tenant for life. *Insert the addtional powers.*

5. THE SD A. hby covts with the sd E. & F. that the sd A. or his successors in title will henceforth durg the continuce of the sevl terms grted by the sevl leases referred to in the Second Schdle hto pay the sevl rents thrby reserved & perform & observe the covts on the pt of the lessees & condons thrin contd, & will at all times keep the sd E. & F. & their respve estes effectually indemnified agst all actions & proceedgs, costs, damages, expses, claims, & demands whatsr by reason or on account of the non-paymt of any of the sd rents, or any pt throf, or the breach, non-perfce, or non-observce of the sd covts or condons or any of them.

6. The power to appt a new tree or new trees of the settlemt is vested in the sd A. durg his life.

In witness, &c.

[Schdles (*a*).]

XXII.

VESTING Deed *for giving effect to a* Settlement *by* Two Deeds *of* Freeholds *subsisting at the commencement of the* Settled Land Act, 1925.

Parties, E. & F., trees, "hrinar called the trees," 1; A. *tenant for life*, 2. Whas by an indre of settlemt, dated, &c., & made betn the sd A. of the first pt, B. of the second pt, & the trees of the third pt, & a deed of even date thrwith exercising powers of jointuring & chargg portions thrin mentd, the ppty descd in the First Schdle hto was with other ppty settled upon limitations under wch the sd A. is tenant for life in posson throf; And whas the trees are the trees for the pposes of the S. L. Act, 1925, of the settlemt made by the sd indre of settlemt & the sd deed of even date thrwith & the power of apptg a new tree or new trees of the sd settlemt is vested in the sd A. durg his life; And whas the sd A. has requested the sd E. & F. to execute a principal vestg deed psuant to the provons of the sd Act, NOW for givg effect to the requiremts of the S. L. Act, 1925, THIS DEED WITNESSETH as follows:—

1. The trees **as trees** hby declare that All & Singular the lands & ppty descd in the First Schdle hto & all other the lands & ppty capable of being vested by this declaron wch are now by any means subjt to the limitations of the sd indre of settlemt are vested in the sd A. in fee simple.

(*a*) In the first part of the First Schedule give particulars of the manors, advowsons, and other incorporeal property. In the second part give particulars of the freehold land referring, if practicable, to annexed plans, so that the vesting deed may ultimately become a convenient root of title. Unless this is done the deeds referred to will for the purposes of the parcels remain part of the title. In the Second Schedule give particulars of the dates of and parties to the leases of the leasehold property, and short particulars of the premises demised, the terms and the rents. If there are any mortgages having priority to the settlement these should be mentioned in another Schedule and referred to in the recitals.

2. The sd A. shl stand possed of the premes upon the trusts & subjt to the powers & provons upon & subjt to wch under the sd indre of settlemt & the sd deed of even date thrwith or orwise the same ought to be held from time to time.

3. The trees are trees of the settlemt for the ppose of the S. L. Act, 1925.

4. The additional or larger powers mentd in the Second Schdle hto are conferred by the sd settlemt in relation to the settled land, & by virtue of the S. L. Act, 1925, operate & are exercisable as if confined by that Act on a tenant for life.

5. The power of apptg a new tree or new trees of the settlemt is vested in the sd A. durg his life.

In witness, &c.

[Schdles.]

XXIII.

VESTING Deed *for giving effect to a* Settlement *by* Will *of* Freeholds *subsisting at the commencement of the* Settled Land Act, 1925 (*b*).

Parties, E. & F., *trees* (hrinar called the trees), 1; A. *tenant for life*, 2. Whas X. late of, &c., deced, duly made his will, dated, &c., & thrby after apptg C. & D. to be exors of his sd will & trees throf for the pposes of the S. L. Acts, 1882 to 1890, devised the lands & ppty descd in the First Schdle hto [by the descron of, &c.] to the use of the sd A. durg his life with remrs over (*c*). *Recite death of X. & probate.* And whas under or by virtue of the deeds & events set out in the Second Schdle hto the trees are the prsnt trees of the settlemt created by the sd will for the pposes of the S. L. Act, 1925. *Request to trees to execute vestg deed, ante*, p. 1077. NOW for givg effect to the requiremts of the S. L. Act, 1925, THIS DEED WITNESSETH as follows:—

1. The trees **as trees** hby declare that All & Singular the

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(*b*) See *ante*, p. 1075, note (*d*).

(*c*) *If it is the case continue*, "And the testor thrby decld that the power of apptg new trees of the settlemt thrby created shd be vested in the sd A. durg his life."

lands & ppty descd in the First Schdle hto & all other (if any) the premes capable of being vested by this declon wch are now by any means subjt to the limons of the settlemt created by the recited will are vested in the sd A. in fee simple.

2. The sd A. shl stand possed of the sd lands & ppty upon the trusts & subjt to the powers & provons upon & subjt to wch under the settlemt created by the sd will or orwise the same ought to be held from time to time.

3. The trees are the trees of the settlemt for the pposes of the S. L. Act, 1925.

[4. The additional or larger powers mentd in the Second Schdle hto are conferred by the sd will in relation to the settled land, & by virtue of the S. L. Act, 1925, operate & are exsable as if conferred by that Act on a tenant for life.**]**

5. No pson is nominated by the sd will for the ppose of apptg new trees throf, & the staty power of apptg new trees of the settlemt created by the sd will applies & is vested in the trees.

In witness, &c.

Three Schdles.

XXIV.

VESTING Deed *for giving effect to a* Settlement *subsisting at the commencement of the* Settled Land Act, 1925 (*a*), *of* Freeholds *or* Leaseholds *held* In Trust *for an* Infant (*b*).

THIS VESTING DEED made the —— day of —— by E. of, &c., & F. of, &c. (hrinar called the Trees). Whas by an order of the Chancery Division of the High Court of Justice made by Mr. Justice —— on the —— day of ——. In the matter, &c., it was ordered that the powers confrd upon tenants for life by the S. L. Acts, 1882 to 1890, might be exercised by the trees on behalf of A. durg his minority over or in relation to the sd freehd **[**leasehd**]** ppty; NOW for givg

(*a*) See S. L. Act, 1882, s. 59, and S. L. Act, 1925, s. 1. Though the land remains settled land, the infant is not under the present Act deemed to be a tenant for life.

(*b*) See S. L. Act, 1925, Second Schedule, para. 3 (1), (3), (4).

effect to the requiremts of the S. L. Act, 1925, THIS DEED WITNESSETH as follows :—

1. THE TREES **as trees** hby declare that All & Singular the premes comprised in or referred to in the recited order are vested in themselves in fee simple [for all the residue of the term of —— yrs grted by the sd lease].

2. THE TREES shl stand possed of the premes upon such trusts as may be requisite for givg effect to the rights of the sd A. & other psons (if any) intted thrin (*c*).

3. THE TREES are the trees of the settlemt for the pposes of the S. L. Act, 1925.

IN WITNESS, &c.

XXV.

DECLARATION *by* TRUSTEES *by* DEED *made pursuant to* SECTION 17 *of the* SETTLED LAND ACT, 1925, DISCHARGING THEMSELVES *from the* TRUSTS *of a* SPENT SETTLEMENT (*d*).

A DEED OF DISCHARGE made by E. of, &c., & F. of, &c. (hrinar called the trees) : WHAS by a principal vestg deed (hrinar called the ppal deed) dated, &c., & made, &c., the ppty thrin parlarly descd was decld to be vested in the sd A. in fee simple upon the trusts & subjt to the powers & provons upon & subjt to wch under the will, dated, &c., & proved, &c., of X. who died on the —— day of —— or orwise the same ought from time to time thenceforwd to be held, AND it was also thby decld that the trees were the trees of the settlemt created by the sd will for the pposes of the S. L. Act, 1925 ; AND WHAS all equitable intts & powers under the sd will of the sd X. have ceased & determined : NOW THIS DEED made in psuance

(*c*) See S. L. Act, 1925, Second Schedule, para. 3 (1).

(*d*) See S. L. Act, 1925, s. 17, and *ante*, p. 582, note. The persons to make the declaration are the persons who in the last or only principal vesting instrument (defined in s. 117 (1) (xxxi)), or the last or only endorsement on or annex thereto, are declared to be the trustees of the settlement, *i.e.* the settlement created by the trust instrument, including several instruments, therein referred to, or the survivors of them. For the case where, although all equitable interests and powers under the trust instrument have ceased, there is a derivative settlement affecting the land, see next Precedent.

of the staty obligon in that behalf imposed by s. 17 of the S. L. Act, 1925, WITNESSETH and the trees hby declare that they the trees are discharged from the trusts of the sd will so far as regards the ppty comprised in the principal deed. IN WITNESS, &c.

XXVI.

DECLARATION *by* TRUSTEES *by* DEED *made pursuant to* SECTION 17 *of the* SETTLED LAND ACT, 1925, DISCHARGING THEMSELVES *from the* TRUSTS *of a* SPENT SETTLEMENT *where a* DERIVATIVE SETTLEMENT *has been made* (*a*).

A DEED OF DISCHARGE made by E. of, &c., & F. of, &c. (hrinar called the trees): WHAS by a ppal vestg deed (hrinar called the first ppal deed), dated, &c., & made, &c., the ppty thrin parlarly descd was decld to be vested in the sd A. in fee simple upon the trusts & subjt to the powers & provons upon & subjt to wch under the will dated, &c., & proved, &c., of X. who died on the —— day of —— or orwise the same ought from time to time thenceforwd to be held, AND it was also decld that the trees were the trees of the settlemt created by the sd will for the pposes of the S. L. Act, 1925, AND WHAS the sd A. died on the —— day of —— havg by his will dated, &c., apptd the trees to be special exors throf in respt of the sd settled ppty, & probate of the sd will limited to the sd settled ppty was on the —— day of —— grted to the trees out of the —— Probate Registry; AND WHAS by a vestg assent dated, &c., & signed by the trees as psnl repres of the sd A., the trees assented to the vestg in B. of all the ppty comprised in the first ppal deed for all the este or intt thrin of the sd A. at the time of his death; AND it was thrby decld that all the same ppty was vested in the sd B. upon the trusts decld concerng the same by the sd will of the sd X. deced being the trust instrumt referred to in the first ppal deed or upon such other trusts as the same ought from time to time

(*a*) See note (*d*) to last Precedent. If the deed contains no statement to the contrary, a purchaser of a legal estate in the land to which the deed relates will be entitled to assume that the land has ceased to be settled land and is not subject to any trust for sale: S. L. Act, 1925, s. 17 (3).

thenceforwd to be held : AND WHAS by a ppal vestg deed (hrinar called the second ppal deed) dated, &c., & made betn the sd B. of the first pt, W. of the second pt, & X. & Y. of the third pt. All the ppty comprised in the first ppal deed, *or* " the ppty thrin parlarly descd being pt of the ppty comprised in the first ppal deed," was decld to be vested in the sd B. in fee simple upon the trusts of a trust instrumt, dated the —— day of —— (*b*). AND the sd X. & Y. were stated to be the trees of the settlemt thrby created for the pposes of the S. L. Act, 1925 ; AND WHAS all equitable intts & powers under the sd will of the sd X. deced have ceased & determined : NOW THIS DEED made psuant to the staty obligon in that behalf imposed by s. 17 of the S. L. Act, 1925, WITNESSETH as follows :—

1. THE TREES hby declare that they are discharged from the trusts of the settlemt created by the sd will of the sd X. deced so far as regards the ppty comprised in the first ppal deed.

2. THE SD ppty is settled land by virtue of the second ppal deed & the trust instrumt thrin referred to (*c*).

IN WITNESS, &c.

XXVII.

DEED ENLARGING *a* LONG TERM *of* YEARS *into a* FEE SIMPLE, *under the* LAW OF PROPERTY ACT, 1925. VARIATIONS *where the* DEED *comprises* PART *only of the* LAND *comprised in the* TERM, *and where it is* SUBJECT *to* INCUMBRANCES (*d*).

A DEED OF ENLARGEMENT made by A. of, &c. ; WHAS by an indre, dated, &c., & made, &c., all those, &c., *parcels in* Recitals.

(*b*) The trust instrument in this case will usually have been executed at some time prior to the vesting deed, though it will not be deemed to be a trust instrument under the S. L. Act, 1925, s. 9 (1) (iv), until the prior interests and powers under the original trust instrument have determined.

(*c*) See S. L. Act, 1925, s. 17 (1).

(*d*) See L. P. Act, 1925, s. 153. A considerable amount of property is or was held for long terms, originating mostly in old mortgages by demise, the equity of redemption of which has become barred by foreclosure or the Statute of Limitations. Under s. 88 (2) of the L. P. Act, 1925, where As to enlarging long terms

full being [pt of] the premes comprised in & demised to X. by a certain indre dated, &c., & made, &c., for the term of —— yrs from the —— day of —— at a peppercorn rent were assned to the sd A., for the residue then unexpired of the sd term of —— yrs [subjt to certain mtges & incumbces affectg the same]; AND WHAS the sd A. is desirous of enlargg the sd term of —— yrs [as regards the premes assned to him as afsd] into a fee simple: NOW THIS DEED WITNESSETH that by virtue of the power in this behalf conferred by s. 153 of the L. P. Act, 1925, the sd A. hby declares that from & after the execution of these psnts the residue now unexpired of the sd term of

Assignment of term to trustees.

Desire to enlarge term.

Witnesseth.

Declaration.

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into fee simple.

an estate in fee simple has been mortgaged by the creation of a term of years absolute or by a charge by way of legal mortgage, an order for foreclosure absolute obtained by the mortgagee will operate to vest in him the fee simple of the mortgaged property; and the mortgage term, if any, will thereupon become merged in the fee simple; and, under sub-s. (3) of the same section, a mortgagee claiming under a mortgage similary created, and who acquires a title under the Limitation Acts, may take advantage of the power conferred by s. 153 (which is expressly extended to mortgage terms where the right of redemption is barred) to enlarge the mortgage term into a fee simple: see Prec. XXX., *infra*.

The power of enlargement conferred by s. 153, which replaces and extends the C. Act, 1881, s. 65, as amended by the C. Act, 1882, s. 11, applies where there is subsisting a residue unexpired of not less than 200 years of a term originally created for not less than 300 years without (*a*) any trust or right of redemption affecting the term in favour of the freeholder or other person entitled in reversion expectant on the term, and without (*b*) any rent or with merely a peppercorn rent or other rent having no money value incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released or has become barred by lapse of time, or has in any other way ceased to be payable. A rent not exceeding the yearly sum of one pound which has not been collected or paid for a continuous period of 21 years or upwards is, for the purposes of the section, to be deemed to have ceased to be payable; provided that, of such period, as least five years must have elapsed after the commencement of the Act: see sub-s. (4).

It must of course be ascertained with certainty that the case falls strictly within the section, and that its conditions are complied with, otherwise the deed would fail of effect, and might lead to considerable embarrassment. It must also be remembered that a nominal rent in current coin is by no means certainly "a rent having no money value," see *Re Smith & Stott*, 29 Ch. D. 1009, n.; *Re Chapman & Hobbs*, *ib.* 1007; *Blarberg* v. *Keeves*, [1906] 2 Ch. 175; and that, subject to the provision made by s. 153 (4) above mentioned, rent does not cease to be payable by lapse of time: *Archibold* v. *Scully*, 9 H. L. Cas. 360; though after non-payment for a long time it might, apart from the sub-section referred to, be presumed to have been released; *Eldridge* v. *Knott*, Cowp. 214.

—— yrs grted or created by the sd indre of, &c., shl as regards all the premes thrin comprised, *or*, " as regards such pt or pts of the premes comprised in the sd term as were by the sd indre of, &c., assned to the sd A. as afsd," be & the same is hby enlarged into a fee simple. IN WITNESS, &c.

XXVIII.

DEED *by* TRUSTEES *for* SALE ENLARGING *a* LONG TERM *of* YEARS *into a* FEE SIMPLE *under the* LAW OF PROPERTY ACT, 1925.

A DEED OF ENLARGEMENT made by A. of, &c., & B. of, &c. *Recite assignmt of demised premes as in last Precedent to* A. *&* B. *saying*, " for the residue then unexpired of the sd term of —— years upon the trusts for sale & orwise thrin mentd." AND WHAS the sd A. & B. are desirous of enlargg the sd term of —— years into a fee simple: NOW THIS DEED WITNESSETH as follows :—

1. BY VIRTUE of the power in this behalf conferred by s. 153 of the L. P. Act, 1925, the sd A. & B. hby declare that from & after the exon of these psnts the residue now unexpired of the sd term of —— years grted or created by the sd indre of, &c., shl as regards all the premes thrin comprised be & the same is hby enlarged into a fee simple.

2. THE SD A. & B. shl stand possed of the fee simple of the same premes so acquired by enlargemt as afsd upon all such & the same trusts for sale & orwise as the sd term wd have been subjt to if it had not been enlarged.

IN WITNESS, &c.

XXIX.

SUBSIDIARY VESTING DEED *by* TENANT FOR LIFE ENLARGING *a* LONG TERM *of* YEARS *into a* FEE SIMPLE *under the* LAW OF PROPERTY ACT, 1925.

THIS DEED OF ENLARGEMT & SUBSIDIARY VESTG DEED made betn A. of, &c., *tenant for life*, of the one pt, & E. of

&c., & F. of, &c. (hrinar called the trees), of the other pt. *Recite* lease of ppty " thrin parlarly descd " to X. AND WHAS by a ppal vestg deed (hrinar called the ppal deed), dated, &c., & made betn the sd A. of the first pt, W. of the second pt, & the trees of the third pt, & the freehd & leasehd ppties thrin parlarly descd, which included the premes comprised in the sd lease, were vested in the sd A. as to the sd last mentd premes for all the residue of the sd terms of —— years upon the trusts of a trust instrumt of even date thrwith & by [endorsemts on] the ppal deed the trees were stated to be the trees of the settlemt effected by the ppal deed & the sd trust instrumt for the pposes of the S. L. Act, 1925; AND WHAS the ultimate beneficial intt in the sd term of —— years has not become absolutely & indefeasibly vested in any pson; AND WHAS the sd A. is desirous of enlargg the sd term of —— yrs into a fee simple: NOW THIS DEED WITNESSETH as follows:—

1. BY VIRTUE of the power in this behalf conferred by s. 153 of the L. P. Act, 1925, the sd A. hby declares that from & after the exon of these psnts the residue now unexpired of the sd term of —— yrs grted by the sd lease shl as regards all the premes thrin comprised be & the same is hby enlarged into a fee simple.

2. THE SD A. shl stand possed of the premes for the este in fee simple thrin so vested in him by enlargemt as afsd upon & subjt to such & the same trusts & powers as are decld by the ppal deed by refce as afsd with respt to the freehd ppty thrin comprised.

3. THE TREES are the trees of the settlemt for the pposes of the S. L. Act, 1925.

4. THE POWER of apptg a new tree or new trees of the settlemt is vested in the sd A. durg his life.

IN WITNESS, &c.

XXX.

DEED *by* MORTGAGEE ENLARGING *a* LONG TERM *of* YEARS *into a* FEE SIMPLE *under the* LAW OF PROPERTY ACT, 1925, *where the* RIGHT *of* REDEMPTION *has become* BARRED (*a*).

A DEED OF ENLARGEMENT made by A. of, &c.; WHAS by a mtge dated, &c., & made betn X. of the one pt. & A. of the other pt, the freehd ppty thrin parlarly descd was demised to the sd A. for the term of 3,000 yrs. by way of mtge for securg the paymt to the sd A. of the sum of £—— with intt thron as thrin expressed; AND WHAS the sd A. has entered into posson & receipt of the rents & profits of the sd mtged ppty in or about the yr —— & has ever since remained in uninterrupted posson throf witht any claim being made by or on behalf of the sd X. or any other pson claimg to be entitled thrto, AND the sd A. has become absolutely entitled to the sd mtged premes under the Limitation Acts, 1833, 1837, & 1874, for all the residue unexpired of the sd term of 3,000 yrs; AND WHAS the sd A. is desirous of enlarging the sd term of 3,000 yrs into a fee simple: NOW THESE PRESENTS WITNESS that by virtue of the power in this behalf conferred by ss. 88 & 153 of the L. P. Act, 1925, the sd A. hby declares that from & after the exon of these psnts the residue now unexpired of the sd term of 3,000 yrs created by the sd mtge shl as regards all the premes thrin comprised be & the same is hby enlarged into a fee simple. IN WITNESS, &c.

XXXI.

DEED *for* CONFIRMING LEGAL ESTATES *which have not been* VALIDLY CREATED (*b*).

TO ALL TO WHOM THIS FURTHER ASSURANCE COME, A. of, &c., SENDS GREETING. *Recite the invalid*

(*a*) See *ante*, p. 1083, note (*d*).

(*b*) See L. P. Act, 1925, s. 66. This form, which is taken from Form 7 in the Fifth Schedule of the Act, takes the place of a conveyance to uses for confirming past transactions, and is applicable to a term of years absolute as well as a fee simple.

dealgs, giving short parlars in schdles of the convces, grts & leases, wch purport to transfer or create legal estes, that A. is entitled in fee simple or for a term of yrs absolute in the land affected & desires to confirm the dealgs: NOW THIS DEED WITNESSETH & the sd A. hby declares that his legal este in the premes affected to wch he is entitled as afsd shl go & devolve in such mner as may be requisite for legally confirming the interests capable of subsistg as legal estates expressed to have been transferred or created by the documts mentd in the Schdles hto or any of those documts & any dealgs with the intts so confirmed wch wd have been legal if those intts had in the first instance been validly transferred or created. PROVD ALWAYS that subjt to such confirmon of intts & dealgs nothg hrin contd shl affect the legal este of the sd A. in the premes.

IN WITNESS, &c.

Schdles.

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